5–20–02 Monday
Vol. 67 No. 97 May 20, 2002
Pages 35425–35704

Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–372–AD; Amendment 39–12752; AD 2002–10–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires replacing certain flight warning computers (FWCs) with improved FWCs. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent erroneous display of decision height information to the flightcrew during final approach, which could result in an increased risk of collision with terrain.

DATES: Effective June 24, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on September 25, 2001 (66 FR 48985). That action proposed to require replacing certain flight warning computers (FWCs) with improved FWCs.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the proposed AD be revised to supersede AD 2000–04–11, amendment 39–11593 (65 FR 9209, February 24, 2000), and to restate the requirements of that AD as well as to require the previously optional terminating action. AD 2000–04–11 requires incorporation of a specific operational procedure into the Airplane Flight Manual (AFM) and provides for optional terminating action to incorporate Airbus Service Bulletin A320–31–1106. The proposed AD would require accomplishment of that Airbus service bulletin, which would terminate the requirements of AD 2000–04–11.

The FAA does not concur. The applicability of AD 2000–04–11, which corresponds to French airworthiness directive 2000–004–142(B), is different from the applicability of this final rule. AD 2000–04–11 and the French airworthiness directive apply only to Airbus Model A319, A320, and A321 series airplanes equipped with Rockwell Collins radio altimeter LRA 700 having part number 622–4542–020, excluding those on which Airbus Modification 26017 has been installed. However, this final rule and corresponding French airworthiness directive 2000–320–147(B) apply to all Airbus Model A319, A320, and A321 series airplanes without Airbus Modification 26017, regardless of which radio altimeter is installed. In addition, French airworthiness directive 2000–320–147(B) did not supersede French airworthiness directive 2000–04–142(B), nor was the latter cancelled. Therefore, the FAA actions are consistent with the French airworthiness directives.

The same commenter requests that the statement of unsafe condition in the proposed AD be revised to be consistent with AD 2000–04–11, as follows: ''To prevent erroneous display of decision height information to the flightcrew during final approach, which could result in an increased risk of collision with the terrain, accomplish the following. * * *'' The FAA concurs, and has revised this final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 352 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $63,360, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–10–06 Airbus Industrie: Amendment 39–12752. Docket 2000–NM–372–AD.

Applicability: Model A319, A320, and A321 series airplanes without Airbus Modification 26017; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous display of decision height information to the flightcrew during final approach, which could result in an increased risk of collision with terrain, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, replace the flight warning computers (FWCs) in accordance with Airbus Service Bulletin A320–31–1106, Revision 04, dated December 21, 1999.

Note 2: FWC replacement accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–31–1106, dated January 3, 1997; Revision 01, dated April 16, 1997; Revision 02, dated January 20, 1998; or Revision 03,dated July 9, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Spare Parts

(b) As of the effective date of this AD, no person may install an FWC, part number 350E017251414, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–31–1106, Revision 04, dated December 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–320–147(B), dated July 26, 2000.

(f) This amendment becomes effective on June 24, 2002.

Issued in Renton, Washington, on May 10, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12321 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–4]

Amendment to Class E Airspace; Norton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace at Norton, KS. The FAA has developed Nondirectional Radio Beacon (NDB) Runway (RWY) 16 ORIGINAL Standard Instrument Approach Procedure (SIAP) and NDB RWY 34 ORIGINAL SIAP to serve Norton Municipal Airport, Norton, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAPs and to segregate aircraft using instrument approach procedure in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, October 3, 2002.

Comments for inclusion in the rules Docket must be received on or before July 15, 2002.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 02–ACE–4, 901 Locus, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division,

Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Lucust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed NDB RWY 16 ORIGINAL and NDB RWY 34 ORIGINAL SIAPs to serve Norton Municipal Airport, Norton, KS. The amendment to Class E airspace at Norton, KS. will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register**, that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rule Docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 02–ACE–4.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reason discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.91J Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows;

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Norton, KS [REVISED]

Norton Municipal Airport, KS
(lat.39°51′01″ N., long. 99°53′41″ W.)
Norton NDB
(lat.39°51′20″ N., long. 99°53′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Norton Municipal Airport and within 2.5 miles each side of the 171° bearing from the Norton NDB extending from the 6.5-mile radius to seven miles south of the airport and within 2.5 miles each side of the 311° bearing from the Norton NDB extending from the 6.5-miles radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on April 26, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–12609 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 020328073–2073–01]

RIN 0694–AC55

Revisions to the Export Administration Regulations as a Result of the September 2001 Missile Technology Control Regime (MTCR) Plenary Meeting

AGENCY: Bureau of Industry and Security, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR), Commerce Control List (CCL), to reflect changes that were negotiated during the September 2001 Missile Technology Control Regime (MTCR) Plenary in Ottawa, Canada. These revisions include several changes to CCL entries ECCN 1C107 and ECCN 9A101. The revisions to ECCN 1C107 clarify what shapes and sizes are usable for rocket nozzles and reentry vehicle nose tips. The revisions to ECCN 9A101 expand the scope of items controlled, but will have a minimal effect on the number of license applications submitted to BIS.

DATES: This rule is effective May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: The Missile Technology Control Regime (MTCR) is an export control arrangement among 33 nations including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime is designed to stem the spread of rockets and unmanned air vehicles systems capable of delivering weapons of mass destruction by establishing a common export control policy (the Guidelines) and a shared list of controlled items (the Annex) that each country implements through its own national legislation.

While the MTCR originally restricted transfers of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also cover delivery systems for chemical and biological weapons. The only absolute prohibition in the regime's Guidelines is on the transfer of complete ''production facilities'' for specially designed items in Category I of the MTCR Annex.

MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. MTCR export controls are not bans, but regulatory efforts by individual partners to prevent transfers of items that could contribute to delivery systems for weapons of mass destruction.

This rule amends the Commerce Control List (CCL) to reflect the revisions to the MTCR Annex made at the September 2001 plenary meeting. These revisions include several changes to items 3.A.1 and 8.C.3 of the MTCR Annex and the addition of items 8.C.4 and 8.C.6 to the MTCR Annex, controlled on the CCL under ECCNs 9A101 and 1C107, respectively. Specific changes are:

ECCN 1C107 New parameters are inserted for fine grain recrystallized bulk graphites in paragraph (a), to clarify what bulk graphites are usable in ''missiles.'' The remainder of the entry is restructured for clarity.

Paragraph (b) is divided into two paragraphs and redesignated as (c) and (d), and a new paragraph (b) has been created, from text that was previously in paragraph (a).

ECCN 9A101 The maximum thrust value (paragraph a.1) for lightweight turbojet and turbofan engines usable in ''missiles,'' other than those controlled by 9A001, is changed from 1000 N to 400 N. The specific fuel consumption (paragraph a.2) is changed from 0.13 kg/N/hr to 0.15 kg/N/hr. In addition, clarifying language is added to paragraphs (a.2) and (b), and the text in the ''Related Controls'' paragraph is clarified.

Saving Clause

This rule revises the control parameters of ECCNs 1C107 and 9A101 on the Commerce Control List. For items under these entries, exports and reexports of items removed from eligibility for export or reexport without a license as a result of this regulatory action may continue to be exported or reexported without a license until June 19, 2002.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Matthew Blaskovich, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1

(Materials, Chemicals, ''Microorganisms,'' and Toxins) is amended by revising the List of Items Controlled section of ECCNs 1C107, to read as follows:

* * * * *

1C107 Graphite and ceramic materials, other than those controlled by 1C007, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items:

a. Fine grain recrystallized bulk graphites with a bulk density of 1.72 g/cm^3 or greater, measured at 288 K (15 °C), and having a particle size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:

a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm or greater;

a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;

a.3. Blocks having a size of 120 mm × 120 mm × 50 mm or greater.

b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;

c. Ceramic composite materials (dielectric constant less than 6 at frequencies from 100 Hz to 10 GHz), for use in ''missile'' radomes; and

d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment) is amended by revising the List of Items Controlled section of ECCN 9A101, to read as follows:

9A101 Lightweight turbojet and turbofan engines (including turbocompound engines) usable in ''missiles'', other than those controlled by 9A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: 9A101.b controls only engines for non-military unmanned air vehicles [UAVs] or remotely piloted vehicles [RPVs], and does not control other engines designed or modified for use in ''missiles'', which are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A
Items:

a. Engines having both of the following characteristics:

a.1. Maximum thrust value greater than 400 N (achieved un-installed) excluding civil certified engines with a maximum thrust value greater than 8,890 N (achieved un-installed), *and*

a.2. Specific fuel consumption of 0.15 kg/N/hr or less (at maximum continuous power at sea level static and standard conditions); *or*

b. Engines designed or modified for use in ''missiles'', regardless of thrust or specific fuel consumption.

Dated: May 10, 2002.

James J. Jochum,

Assistant Secretary for Industry and Security.

[FR Doc. 02–12622 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 00C–0929]

Listing of Color Additives Exempt From Certification; Sodium Copper Chlorophyllin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes. This action is in response to a petition filed by Kraft Foods, Inc.

DATES: This rule is effective June 20, 2002; except as to any provisions that may be stayed by the filing of proper objections. Submit written or electronic objections and requests for a hearing by June 19, 2002.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections and requests for a hearing to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of March 14, 2000 (65 FR 13770), FDA announced that a color additive petition (CAP 0C0270) had been filed by Kraft Foods, Inc.,c/o Flamm Associates, 622 Beachland Blvd., Vero Beach, FL 32963. The petition proposed to amend the color additive regulations to provide for the safe use of sodium copper chlorophyllin to color citrus-based dry beverage mixes.

II. Identity

Sodium copper chlorophyllin is manufactured from chlorophyll, the common pigment of green plants. The manufacturing process consists of three main steps: (1) Extraction of chlorophyll from plant material with an appropriate solvent, (2) preparation of water-soluble derivatives by alkaline hydrolysis of ester groups of chlorophyll (saponification), and (3) replacement of the magnesium ion of natural chlorophyll with copper. The final color additive product sodium copper chlorophyllin is a complex mixture of chlorophyll derivatives (Ref. 1). The petitioner specified the source of chlorophyll used to make sodium copper chlorophyllin as alfalfa (*Medicago sativa*) and provided data showing that sodium copper chlorophyllin prepared from chlorophyll extracted from alfalfa meets the proposed specifications. Therefore, in new § 73.125 (21 CFR 73.125) FDA is limiting the source of chlorophyll used to make sodium copper chlorophyllin to alfalfa.

The agency notes that the intended coloring effect of citrus-based dry beverage mixes is achieved when sodium copper chlorophyllin is used in an amount not exceeding 0.2 percent. Therefore, in new § 73.125 the agency is limiting the amount of sodium copper chlorophyllin in the dry mix to 0.2 percent.

III. Safety Evaluation

In evaluating the safety of the use of sodium copper chlorophyllin to color citrus-based dry beverage mixes, the agency considered: (1) The safety of chlorophyll and copper chlorophyllins, including the manufacturing process of sodium copper chlorophyllin; and (2) the safety of copper in sodium copper chlorophyllin.

A. Safety of Chlorophyll and Copper Chlorophyllins

Chlorophyll occurs naturally in green vegetables and as such constitutes a normal part of the human diet. Various derivatives of chlorophyll, generally referred to as copper chlorophyllins or chlorophyllin copper complexes, including sodium copper chlorophyllin, are commonly used food colors (Refs. 1 and 2). In the United States, potassium sodium copper chlorophyllin has been listed for use as a color additive in dentifrices that are either drugs (21 CFR 73.1125) or cosmetics (21 CFR 73.2125). In addition, FDA permits over-the-counter use of chlorophyllin copper complex as an internal deodorant in doses up to 300 milligrams (mg) daily (21 CFR 357.850).

FDA calculated the estimated daily intake (EDI) of sodium copper chlorophyllin that will result from the petitioned use for 90th percentile consumers older than 2 years as 90 mg/person/day(d). During this calculation, the agency also considered the exposure to the color additive from its uses in dentifrices, and determined that such exposure would be negligible. The agency reviewed a published study submitted with the petition in which potassium sodium copper chlorophyllin was fed to rats at levels up to 3 percent in the feed for up to 2 years (Ref. 3). The agency determined that the results of the study showed no indications of adverse effects in rats at any of the doses tested from the prolonged consumption of the color additive. In addition, there was no evidence of metal toxicity. Moreover, evaluating the same study, the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives (JECFA) also found no adverse effects and established 1,500 mg/kilogram (kg) body weight/d as the no observed effect level (NOEL) of sodium copper chlorophyllin (Ref. 4). By applying a 200-fold safety factor to this NOEL, the agency calculated the acceptable daily intake (ADI) for sodium copper chlorophyllin for a 60-kg human as 450 mg/person/d. The agency notes that the EDI of sodium copper chlorophyllin that will result from the petitioned use for 90th percentile consumers is one-fifth of this ADI. Therefore, FDA concludes that the exposure to sodium copper chlorophyllin from the petitioned use does not pose a safety concern (Ref. 5).

During its safety review, FDA also evaluated the manufacturing process of sodium copper chlorophyllin. The agency is specifying in new § 73.125 the solvents that may be used to manufacture sodium copper chlorophyllin and is establishing a specification for the residues of these solvents that do not present a safety concern and thus may be present in the final product.

B. Safety of Copper in Sodium Copper Chlorophyllin

The petitioner provided data showing that the amount of free (ionizable) copper in sodium copper chlorophyllin does not exceed 200 parts per million (ppm). Therefore, new § 73.125 specifies the amount of free copper in sodium copper chlorophyllin as not more than 200 ppm. Using this limit, FDA calculated the EDI of free copper from the consumption of sodium copper chlorophyllin for 90th percentile consumers older than 2 years as 0.018 mg/person/d. The agency also considered the exposure to copper from the uses of the color additive in dentifrices and determined that this exposure would be negligible. The agency notes that copper is an essential element and a dose of 2 mg/d is the reference daily intake (RDI) (21 CFR 101.9(c)(8)(iv)). Because the EDI for 90th percentile consumers is less than 1 percent of the RDI, the agency believes that the additional exposure of 0.018 mg/d to copper from the petitioned use will not pose a safety concern (Ref. 6).

IV. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the petitioned use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes is safe, the additive will achieve its intended technical effect, and thus, it is suitable for this use. FDA concludes that 21 CFR part 73 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), FDA concludes that certification of sodium copper chlorophyllin is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, FDA will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 0C0270 (65 FR 13770, March 14, 2000). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 19, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Hendry, G. A. F., ''Chlorophylls and Chlorophyll Derivatives,'' in ''Natural Food Colorants,'' 2d ed., pp. 131–156, edited by

Hendry, G. A. F. and J. D. Houghton, Blackie Academic & Professional, New York, 1996.

2. European Parliament and Council Directive 94/36/EC of June 30, 1994, on colours for use in foodstuffs, *Official Journal of the European Communities*, L 237:17–18, 1994.

3. Harrisson, J. W. E., S. E. Levin, and B. Trabin, ''The Safety and Fate of Potassium Sodium Copper Chlorophyllin and Other Copper Compounds,'' *Journal of the American Pharmaceutical Association*, 43:722–737, 1954.

4. ''Toxicological Evaluation of Some Food Colours, Enzymes, Flavour Enhancers, Thickening Agents, and Certain Other Food Additives,'' Joint FAO/WHO Expert Committee on Food Additives, WHO Food Additives Series, No. 6, pp. 74–77, Geneva, 1975.

5. Ikeda, G. J., Memorandum entitled ''Addendum to Toxicology Review Memorandum of June 14, 2000'' from the Division of Food Contact Substance Notification Review (HFS–225) to the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, FDA, November 21, 2001.

6. Ikeda, G. J., Memorandum entitled ''Toxicology Review; Use of Sodium Copper Chlorophyllin as a Colorant for Citrus-based Dry Beverage Mix'' from the Division of Health Effects Evaluation (HFS–225) to the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, FDA, June 14, 2000.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.125 is added to subpart A to read as follows:

§ 73.125 Sodium copper chlorophyllin.

(a) *Identity.* (1) The color additive sodium copper chlorophyllin is a green to black powder prepared from chlorophyll by saponification and replacement of magnesium by copper. Chlorophyll is extracted from alfalfa (*Medicago sativa*) using any one or a combination of the solvents acetone, ethanol, and hexane.

(2) Color additive mixtures made with sodium copper chlorophyllin may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Sodium copper chlorophyllin shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

(1) Moisture, not more than 5.0 percent.

(2) Solvent residues (acetone, ethanol, and hexane), not more than 50 parts per million, singly or, in combination.

(3) Total copper, not less than 4 percent and not more than 6 percent.

(4) Free copper, not more than 200 parts per million.

(5) Lead (as Pb), not more than 10 parts per million.

(6) Arsenic (as As), not more than 3 parts per million.

(7) Mercury (as Hg), not more than 0.5 part per million.

(8) Ratio of absorbance at 405 nanometers (nm) to absorbance at 630 nm, not less than 3.4 and not more than 3.9.

(9) Total copper chlorophyllins, not less than 95 percent of the sample dried at 100 °C for 1 hour.

(c) *Uses and restrictions.* Sodium copper chlorophyllin may be safely used to color citrus-based dry beverage mixes in an amount not exceeding 0.2 percent in the dry mix.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: April 25, 2002.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–12544 Filed 5–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB87

National Forest System Land and Resource Management Planning; Extension of Compliance Deadline

AGENCY: Forest Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Department is issuing an interim final rule to extend the date by which all land and resource management plan amendments and revisions would otherwise be subject to the planning regulations adopted November 9, 2000. An extension of the compliance date will allow the agency to propose and adopt adjustments to the 2000 planning rule that may be necessary. On May 17, 2001 (66 FR 27555), the public was given an opportunity to comment on the advisability and effects of extending the compliance date. At that time, the Forest Service noted that the Department had instructed the agency to propose changes to the November 2000 rule to improve its implementability. The deadline for complying with the November 2000 rule was May 9, 2002, and the proposed changes to the 2000 rule are not yet published. Therefore, the Department is issuing this interim final rule to delay mandatory compliance with the 2000 rule until a new final planning rule is adopted.

EFFECTIVE DATE: This interim final rule is effective May 20, 2002.

ADDRESSES: Written inquiries about or comments on this rule may be sent to the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Ave., SW, Washington, DC 20250–1104 or by facsimile to (202) 205–1012.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Forest Service, (202) 205–1019.

SUPPLEMENTARY INFORMATION: On November 9, 2000, the Secretary of Agriculture adopted a final rule substantially revising the National Forest System land and resource management planning regulation at 36 CFR part 219 (65 FR 67514). Section 219.35 of that rule provided for the transition from the 1982 planning rule to the 2000 rule. Under the requirements of § 219.35 as adopted, all amendments and revisions to land and resource management plans must be prepared pursuant to the November 2000 planning rule, unless the amendment or revision was initiated before November 9, 2000, and a notice of availability of the required environmental disclosure document was published before May 9, 2001. However, the Department subsequently determined that the Forest Service was not sufficiently prepared to implement the November 2000 planning rule. Therefore, on May 17, 2001, the Department issued an interim final rule immediately extending the compliance date of May 9, 2001, until May 9, 2002,

in anticipation that a revised planning rule would be final by that date (66 FR 27552). However, completion of the revised planning rule by May 9, 2002, has proven to be unrealistic; thus, the Department is extending the compliance deadline until the adoption of a new final planning rule.

The Need For Immediate Action

This interim rulemaking action is needed immediately. The May 9, 2002, compliance deadline is imminent, and it is necessary to grant relief to the units of the National Forest System that may initiate plan revisions and amendments after this date but before a new planning regulation is finalized. There are currently 33 forest plans being revised using the 1982 planning rule. An additional 19 plan revisions will be initiated in the next 18 months. The 2000 planning rule requires substantially different analyses to be completed prior to initiating revisions and engaging the public in the revision process. The November 2000 rule also requires different procedures for collaborating with the public to identify issues to be considered in the revision process. Even though units have had the option of using the November 2000 planning rule for plan revisions and amendments, to date no unit is utilizing it. As with the interim final rule adopted May 17, 2001, this new interim final rule allows forests the option of proceeding under the 1982 rule or under the November 2000 rule.

Another immediate concern is that many forests need to amend their land and resource management plans to implement site-specific projects that support the objectives of the interagency National Fire Plan, which was developed in response to the catastrophic wildfires of the 2000 fire season. These projects include activities to reduce high-hazard fuels near urban and suburban areas and to restore and rehabilitate burned areas. Because the November 2000 rule is less well understood, and, in some respects, more complicated than the 1982 regulations, it will be difficult for forests to fully comply with it and complete the necessary amendments to implement those projects.

Agency Proposal To Improve November 2000 Rule

After adoption of the November 2000 planning rule, the Secretary received a number of comments from individuals, groups, and organizations expressing concerns regarding its implementation. In addition, lawsuits challenging the promulgation of the 2000 rule have been filed. As a result, the Department and the agency initiated two reviews of the 2000 rule focusing on its ''implementability''. The reviews concluded that many of the concerns regarding implementability of the rule were serious. The principal concerns identified were lack of clarity, budgetary and staffing impacts associated with sustainability, species viability requirements, use of science and scientists, monitoring, and the length of the transition requirements of the 2000 rule. Having considered the conclusions of the reviews of the 2000 rule, the Department directed the agency to develop a proposed rule to revise the 2000 rule. Notice of this proposed rulemaking was given in the Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions on December 3, 2001 (66 FR 61400). That proposed rule is currently undergoing review within the Administration and is expected to be published soon. However, the Department does not expect to have a final rule in place before October 1, 2002.

On May 17, 2001, the Department issued an interim final rule and simultaneously issued a proposed rule extending the compliance date of May 9, 2001, until May 9, 2002. The agency received 84 responses to the request for comments. Categories of respondents included the wood products, mining, and agricultural industries; recreation, preservation, and conservation organizations; and unaffiliated individuals. About half of the respondents did not believe that the agency should extend the compliance deadline. They feel that the November 2000 rule should be implemented as is. In contrast, the balance of the respondents agreed with the need to extend the compliance date and felt that it was reasonable to allow the agency time to make adjustments to the 2000 rule. Among those who felt that the extension was appropriate, many encouraged the agency to take whatever time necessary to carefully consider the needed adjustments to the November 2000 rule. Some suggested the agency consider an extension beyond May 9, 2002. This interim final rule extending the date in § 219.35(b) will provide the agency and the Department the time needed to continue the current rulemaking effort to propose and adopt improvements and adjustments to the November 2000 rule that may be needed.

Effects of the Interim Final Rule

In light of the reponses the agency received on the May 17, 2001, proposed rule, and the subsequent delay in publishing a proposed rule to revise the November 2000 planning rule, the Department is now extending the compliance date established in 36 CFR 219.35(b) until such time as a new final planning rule is adopted.

The interim final rule will not alter the timber suitability provision in 36 CFR 219.35(c). If a suitability analysis must be prepared before a new planning rule is adopted, the Responsible Official will continue to have the option of conducting the suitability review pursuant to either the 1982 rule or § 219.35(c) of the 2000 rule. While most units are not prepared to implement the November 2000 rule, this interim final rule does not prohibit forests from preparing amendments or revisions of land and resource management plans under the November 2000 rule. Rather, this interim final rule will maintain the status quo while the agency proposes and adopts changes to the November 2000 rule to improve its implementability.

The interim final rule also will not alter the transition language in 36 CFR 219.35(d) that directs site-specific decisions to conform to the provisions of the planning regulations after November 9, 2003. However, concerns have been raised by field personnel that the reasons necessitating an extended transition to the November 2000 rule for forest plan amendments or revisions may apply equally, if not more, to the November 9, 2003, deadline for preparing site-specific decisions under part 219. To address these concerns, the Forest Service expects to issue a proposed rule later this year and seek public comment on whether the November 9, 2003, date in 36 CFR 219.35(d), which would require that site-specific decisions conform to the 2000 rule, should be extended or whether the provision should be removed.

Exemption From Notice and Comment

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, the APA allows agencies to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest.'' (5 U.S.C. 553(b)(3)(B)). Furthermore, the APA exempts certain rulemakings from its notice and comment requirements, including rulemakings
of agency organization, procedure, or practice'' (5 U.S.C. 553 (a)(2) and (b)(3)(A)).

In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the APA notice and comment rulemaking exemptions (July 24, 1971; 36 FR 13804). Thus, USDA agencies proposing rules generally provide notice and an opportunity to comment on proposed rules. However, the Hardin policy permits agencies to publish final rules without prior notice and comment when an agency finds for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest. The courts have recognized this good cause exception of the Hardin policy and have indicated that since the publication requirement was adopted voluntarily, the Secretary should be afforded ''more latitude'' in making a good cause determination. See *Alcaraz* v. *Block*, 746 F.2d 593, 612 (9th Cir. 1984).

To the extent that 5 U.S.C. section 553 applies to this interim final rule, good cause exists to exempt this rulemaking from advance notice and comment. (5 U.S.C. 553 (b)(B) and 553 (d)(3)). The Department has determined that delaying an extension of the compliance date in § 219.35(b) in order to obtain public comment is impracticable, unnecessary, and contrary to the public interest. Earlier in this preamble, the Department has made a clear showing that an extension of the compliance date is necessary to allow amendments and revisions to land and resource management plans to continue and to help ensure, among other things, timely implementation of the interagency National Fire Plan as directed by Congress. Given the agency's inability to complete all the actions necessary to meet the May 9, 2002, deadline, it is impracticable to provide for prior public comment on this extension. The agency's announced intention to revise the November 2000 planning rule, as well as previous public comment opportunities on adjusting the transitional language, are also important considerations in adopting this interim final rule.

The public interest is best served by extending the compliance date and avoiding the loss and duplication of agency analysis and public involvement efforts for amendments and revisions prepared pursuant to the 1982 rule.

Other Changes

In addition to the extension, this interim final rule would include at § 219.35(b) the interpretation of the term ''initiated'' as published in an interpretive rule on January 10, 2001 (66 FR 1864), to clarify this term as it applies to amendments or revisions initiated prior to May 9, 2002. This language was also included in the May 17, 2001, interim rule. The changes to § 219.35(b) are also fully consistent with the other provisions of the interpretive rule.

Conclusion

For the reasons identified in this preamble, the Department finds good cause to adopt without prior notice and comment this interim final rule that amends § 219.35(b). This rule extends the date by which land and resource management plan amendments or revisions must comply with the November 2000 planning rule from May 9, 2002, until the Department promulgates a revised final planning rule.

This interim final rule is necessary to grant relief to the units of the National Forest System that may initiate plan revisions and amendments after May 9, 2002, but before a new planning rule is finalized. The interim final rule is also needed to facilitate timely implementation of site-specific projects that support the interagency National Fire Plan.

Regulatory Certifications

Regulatory Impact

This is not a significant rule as defined in Executive Order (E.O.) 12866. This interim final rule will not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This interim final rule will not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this interim final rule will not alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to Office of Management and Budget (OMB) review under E.O. 12866. Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This interim final rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This interim final rule will not impose recordkeeping requirements; will not affect the competitive position of small businesses in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact

This interim final rule has no direct or indirect effect on the environment, but merely extends the date by which amendments and revisions of land and resource management plans may be continued under the 1982 planning rule, as well as the date by which plans must conform to the November 2000 rule. The planning regulation itself deals with the development and adoption of Forest Service land and resource management plan decisions. An environmental assessment was completed on the November 2000 planning rule, with a finding that the rule would have no significant impact on the environment. Moreover, section 31.1b of Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (57 FR 43180; September 18, 1992), excludes from documentation in an environmental assessment or impact statement any rule, regulation, or policy to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking and the procedural nature of 36 CFR part 219, the Department has determined that this interim final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the interim final rule will not pose the risk of a taking of private property, as the interim final rule is limited to adjustment of the compliance date in the November 2000 planning rule.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim final rule on State, local and tribal governments and the private

sector. This interim final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism and Consultation and Coordination with Tribal Governments

The Department has considered this interim final rule under the requirements of Executive Orders 12612 and 13132 and concluded that the rule does not have substantial direct effects on (1) the States, (2) on the relationship between the national government and the States, or (3) on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Additionally, this interim final rule does not have tribal implications as defined in Executive Order 13175 and, therefore, advance consultation with tribes was not required.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this rule does not constitute a significant energy action as defined in the Executive Order. This interim final rule merely extends a compliance date and allows the option of using the 1982 or the 2000 planning regulations to guide the amendment or revision of National Forest System land and resource management plans.

List of Subjects in Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is amended as follows:

PART 219–PLANNING

Subpart A—National Forest System Land and Resource Management Planning

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

2. Revise paragraph (b) of § 219.35 to read as follows:

§ 219.35 Transition.

* * * * *

(b) Until the Department promulgates the revised final planning regulations announced in the December 3, 2001, Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions, a responsible official may elect to continue or to initiate new plan amendments or revisions under the 1982 planning regulations in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2001), or the responsible official may conduct the amendment or revision process in conformance with the provisions of this subpart. For the purposes of this paragraph, the reference to initiation of a plan amendment or revision means that the agency has issued a Notice of Intent or other public notification announcing the commencement of a plan amendment or revision as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

* * * * *

Dated: May 10, 2002.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 02–12508 Filed 5–17–02; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0311a; FRL–7202–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of nitrogen oxides (NO_X) and carbon monoxide (CO) from electric power generating steam boilers. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 19, 2002, without further notice, unless EPA receives adverse comments by June 19, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local Agency	Rule No.	Rule Title	Adopted	Submitted
BAAQMD	9–11	Nitrogen Oxides and Carbon Monoxide From Electric Power Generating Steam Boilers.	05/17/00	12/11/00

On February 8, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

The previous version of Rule 9–11 is SIP Rule 9–11, Nitrogen Oxides and Carbon Monoxide From Utility Electric Power Generating Boilers, approved into the SIP on July 31, 1998 (63 FR 40828).

C. What are the Changes in the Submitted Rule?

BAAQMD Rule 9–11 regulates NO_X and CO emissions from electric power generating steam boilers down to a rating of 250 million Btu per hour (MM Btu/hr). We approved an earlier version of Rule 9–11 into the California SIP. The submitted Rule 9–11 includes changes necessary to ensure that the rule continues to be as effective in reducing emissions from power plants under the deregulated electricity market in California as had been anticipated when the original Rule 9–11 was drafted and submitted to EPA for approval into the SIP. Specifically, the existing Rule 9–11 applies to electric power generating steam boilers owned and/or operated by a California Public Utilities Commission (CPUC) regulated utility. In the wake of deregulation of certain aspects of the California electricity market and the corresponding change in the role of the CPUC, the number of such boilers has decreased and will eventually be zero, which will diminish the enforceability of the rule by EPA or citizens. The submitted Rule 9–11 deletes the references to utilities or the CPUC that are found in the existing SIP Rule 9–11 and simply refers to all electric power generating steam boilers of a certain size or greater in the BAAQMD, thereby retaining the regulatory support for emission reductions assumed to be a part of the SIP.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). The BAAQMD regulates an area designated as a nonattainment area for ozone, and such areas must comply with title I, part D, subpart 1 of the CAA, which includes section 172(c)(1). accordance with subpart 1, section 172(c)(1) of the CAA. This section requires that the BAAQMD adopt RACM that, at a minimum, includes RACT. However, there are no specific mandatory NO_X measures that must be adopted under section 172(c)(1). In addition, ozone isopleths developed by the BAAQMD have shown that additional NO_X control would be disbeneficial in reducing peak ozone concentrations in Livermore Valley, the subarea from which the most ozone violations are recorded and from which the regional ozone attainment strategy derives. See figure 3, on page 17, of the *San Francisco Bay Area Ozone Attainment Plan for the 1-Hour National Ozone Standard,* BAAQMD (June 1999) and figures 3 and 6, on pages 18 and 21, respectively, of the *Revised San Francisco Bay Area Ozone Attainment Plan for the 1-Hour National Ozone Standard,* BAAQMD (October 24, 2001). Therefore, requiring more stringent NO_X controls is not required to fulfill RACM/RACT requirements under section 172(c)(1) of the CAA.

Guidance and policy documents that we used include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 Federal Register Document,* (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, U.S. EPA (September 20, 1999).
- Alternative Control Techniques Document—NO_X Emissions From Utility Boilers, U.S. EPA, Office of Air Quality Planning and Standards (March 1994).

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and RACM/RACT requirements. The TSD has more information on our evaluation.

C. EPA Recommendations for the Next Rule Revision

The following are not grounds for disapproval at this time, but should be corrected in the next rule revision:

- The ammonia test method should not allow for the approval by the APCO of an unspecified alternate test method.
- The exemption from the NO_X emission standards during startup can continue indefinitely if an unspecified catalytic reaction temperature is not reached. A maximum limit for the startup time or the means of determining the applicable catalytic reaction temperature should be stated.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by June 19, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 19, 2002. This action will incorporate BAAQMD Rule 9–11, adopted on May 17, 2000 into the federally enforceable SIP and thereby supercede the existing SIP Rule 9–11, approved into the SIP on July 31, 1998 (63 FR 40828).

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog, and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 11, 2002.

Nora L. McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(285)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(285) * * *

(C) Bay Area Air Quality Management District.

(*1*) Rule 9–11, adopted on May 17, 2000.

* * * * *

[FR Doc. 02–12410 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN66–01–7291a; FRL–7206–3]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum, LLC. (Marathon Ashland). By its submittal dated February 6, 2000, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Marathon Ashland's Title V Operating Permit into the Minnesota SO_2 SIP and remove the Marathon Ashland Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective July 19, 2002, unless EPA receives adverse comment by June 19, 2002. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO $_2$ SIP certain portions of the Title V permit for Marathon Ashland, located in the cities of St. Paul Park and Newport, Washington County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as ''Title I condition: SIP for SO_2 NAAQS 40 CFR pt.50 and Minnesota State Implementation Plan (SIP).'' In this same action, EPA is removing the Marathon Ashland Administrative Order from the state SO_2 SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP or their accompanying supportive documents, such as the SO_2 air dispersion modeling. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO_2 requirements of the Act. The only change to the SO_2 SIP is the enforceable document for Marathon Ashland, from the Administrative Order to the federal Title V permit.

II. Background on Minnesota Submittal

1. What Is the Background for This Action?

Marathon Ashland is located in the cities of St. Paul Park and Newport, Washington County, Minnesota. Monitored violations of the primary SO_2 NAAQS from 1975 through 1977 led EPA to designate Air Quality Control Region (AQCR) 131 as a primary SO_2 nonattainment area on March 3, 1978 (43 FR 8962). AQCR 131 includes Washington County. In response to Part D requirements of the Clean Air Act, MPCA submitted an SO_2 plan on August 4, 1980. EPA approved the Minnesota Part D SO_2 SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

The promulgation of the Stack Height Rule on July 8, 1985, required MPCA to review existing emission limitations to determine if any sources were affected by the new Rule. The MPCA determined that Marathon Ashland would require additional permit revisions due to modeled violations of the SO_2 NAAQS using the reduced creditable stack heights. A SIP revision for Marathon Ashland was submitted on June 30, 1987, which MPCA later withdrew because the company could not meet one of the emission limits listed in the permit.

On December 11, 1992, the MPCA submitted an SO_2 SIP revision for the St. Paul Park/Ashland area, which included an administrative order for Marathon Ashland. Minnesota submitted a revised plan on September 30, 1994, in response to changes EPA required to the proposed SIP revision before it could be approved. EPA approved the St. Paul Park/Ashland SO_2 SIP on January 18, 1995 (60 FR 3544).

The state requested that portions of Dakota and Washington Counties (the areas surrounding Marathon Ashland) be redesignated to attainment of the SO_2 NAAQS on October 31, 1995. EPA approved the St. Paul Park Area redesignation request on May 13, 1997 (62 FR 26230).

On December 31, 1998, the MPCA submitted to EPA Amendment Four to Marathon Ashland's order as a site-specific SO_2 SIP revision. EPA determined that Amendment Four to Marathon Ashland's order provided for attainment and maintenance of the SO_2 NAAQS and approved the revised order into the state SIP on August 16, 1999 (64 FR 44408).

2. What Information Did Minnesota Submit, and What Were its Requests?

The SIP revision submitted by MPCA on February 6, 2000, consists of a Title V operating permit issued to Marathon Ashland. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO $_2$ SIP only the portions of the NSP Riverside Plant Title V permit cited as ''Title I condition: SIP for SO_2 NAAQS

40 CFR pt.50 and Minnesota State Implementation Plan (SIP)'; and,

(2) the removal from the Minnesota SO_2 SIP of the Administrative Order for Marathon Ashland previously approved into the SIP.

3. What is a ''Title I Condition?'

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permits submitted by MPCA are cited as ''Title I condition: State Implementation Plan for SO_2,'' therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to Marathon Ashland and included in the SIP submittal need to be revised in the future.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Marathon Ashland, located in the cities of St. Paul Park and Newport, Washington County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Marathon Ashland's Title V permit cited as ''Title I condition: SIP for SO_2 NAAQS 40 CFR pt.50 and Minnesota State Implementation Plan (SIP).'' In this same action, EPA is also removing from the state SO_2 SIP the Marathon Ashland Administrative Order which had previously been approved into the SIP on January 18, 1995 and revised on August 16, 1999.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 19, 2002 without further notice unless we receive relevant adverse comments by June 19, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 19, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 8, 2002.

Robert Springer,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by removing and reserving paragraphs (c)(38) and (c)(49) and adding paragraph (c)(55) to read as follows:

Sec. 52.1220 Identification of plan.

* * * * *

(c) * * *

(38) [Reserved]

* * * * *

(49) [Reserved]

* * * * *

(55) On February 6, 2000, the State of Minnesota submitted a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) SIP for Marathon Ashland Petroleum, LLC (Marathon Ashland), located in the cities of St. Paul Park and Newport, Washington County, Minnesota. Specifically, EPA is only approving into the SIP only those portions of the Marathon Ashland Title V Operating permit cited as ''Title I condition: SIP for SO_2 NAAQS 40 CFR pt.50 and Minnesota State Implementation Plan (SIP).'' In this same action, EPA is removing from the state SO_2 SIP the Marathon Ashland Administrative Order previously approved in paragraph (c)(38) and revised in paragraph (c)(49) of this section.

(i) Incorporation by reference

(A) AIR EMISSION PERMIT NO. 16300003–003, issued by the Minnesota Pollution Control Agency to Marathon Ashland Petroleum, LLC on October 26, 1999, Title I conditions only.

[FR Doc. 02–12414 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–066–7015a; A–1–FRL–7171–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; New CTGs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements for certain facilities which emit volatile organic compounds (VOCs). The intended effect of this action is to approve these requirements into the Maine SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective July 19, 2002, unless EPA receives adverse comments by June 19, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, D.C. and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What Action Is EPA Taking?

EPA is approving air emission licenses for the following facilities and incorporating these licenses into the Maine SIP: Bath Iron Works in Bath; Pratt & Whitney in North Berwick; and Moosehead Manufacturing's Dover-Foxcroft and Monson plants.

What Are the Relevant Clean Air Act Requirements?

Sections 182(b)(2) and 184(b) of the Clean Air Act contain the requirements relevant to today's action. Section 182(b)(2) requires States to adopt reasonably available control technology (RACT) rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Techniques Guideline (CTG)—i.e., a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources.

Pursuant to the CAA Amendments of 1990, three areas in Maine were classified as moderate ozone nonattainment. (See 56 FR 56694; November 6, 1991). These areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, the State of Maine is located in the Northeast Ozone

Transport Region (OTR). The entire State is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

What Is a Control Techniques Guideline (CTG)?

A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. Under the pre-amended CAA, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended CAA requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs.

On November 15, 1993, EPA issued a CTG for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations and Reactor Processes. Also, on August 27, 1996, EPA issued a CTG for shipbuilding and repair operations and on May 26, 1996, EPA issued a CTG for wood furniture manufacturing operations. Furthermore, on March 27, 1998, EPA issued a CTG for aerospace coating operations.

How Has Maine Addressed the New CTG Categories?

On November 15, 1994, Maine submitted a negative declaration for the SOCMI Distillation and Reactors Processes CTG categories. In addition, in response to the shipbuilding CTG, Maine submitted a license for Portsmouth Naval Shipyard (PNSY). The SOCMI negative declaration and the license for PNSY were approved by EPA on April 18, 2000 (65 FR 20749). Furthermore, on October 11, 2001, Maine submitted licenses for Bath Iron Works, Pratt & Whitney, and Moosehead Manufacturing's Dover-Foxcroft and Monson plants. These facilities are subject to EPA's CTGs for shipbuilding and repair, aerospace coating operations, and wood furniture manufacturing operations, respectively.

What Are the Requirements in the Licenses Submitted by Maine?

The license for Bath Iron Works imposes VOC coating emission limits and recordkeeping requirements on this shipbuilding and repair facility. Specifically, the license includes a general use coating emission limit, as well as limits for 22 categories of specialty coatings. The license for Pratt & Whitney imposes VOC coating emission limits and recordkeeping requirements on this aerospace coating facility. Specifically, the license includes VOC content limits for primers, topcoats, chemical milling maskants and 57 categories of specialty coatings. The licenses for Moosehead Manufacturing's two facilities impose VOC coating emission limits, work practice standards, and recordkeeping requirements on these wood furniture manufacturing facilities. Specifically, the licenses include VOC content limits for sealers and topcoats.

Why Is EPA approving Maine's submittal?

EPA has evaluated the licenses submitted for the four facilities discussed above and has found that these licenses are consistent with the applicable CTG documents. The specific requirements imposed on each facility and EPA's evaluation of these requirements are detailed in a memorandum dated December 17, 2001, entitled ''Technical Support Document—Maine—New CTGs'' (TSD). Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

What Is the process for EPA's approval of this SIP revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective July 19, 2002 without further notice unless the EPA receives adverse comments by June 19, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 19, 2002 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Final Action

EPA is approving the licenses for the following facilities and incorporating them into the Maine SIP: Bath Iron Works; Pratt & Whitney; and Moosehead Manufacturing's Dover-Foxcroft and Monson plants. With this approval, and the previous approval of Maine's negative declaration for the SOCMI Distillation and Reactors Processes CTG categories and the license for Portsmouth Naval Shipyard (65 FR 20749), Maine has met the sections 182(b)(2) and 184(b) CAA requirements to address all new CTGs.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely

approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(51) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 11, 2001.

(i) Incorporation by reference.

(A) License Amendment #10 issued by the Maine Department of Environmental Protection to Bath Iron Works Corporation on April 11, 2001.

(B) License Amendment #6 issued by the Maine Department of Environmental Protection to Pratt & Whitney on April 26, 2001.

(C) License Amendment #7 issued by the Maine Department of Environmental Protection to Pratt & Whitney on July 2, 2001.

(D) License Amendment #2 issued by the Maine Department of Environmental Protection to Moosehead Manufacturing Co.'s Dover-Foxcroft plant on May 10, 2001.

(E) License Amendment #2 issued by the Maine Department of Environmental Protection to Moosehead Manufacturing Co.'sMonson plant on May 10, 2001.

(ii) Additional materials

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citations for Chapter 134 to read as follows:

§ 52.1031 EPA-approved Maine Regulations

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State	Title/subject	Adopted date by State	Approved date by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
134	Reasonably available control technology for facilities that emit volatile organic compounds.	4/11/01	5/20/02	[Insert FR citation from published date]	(c)(51)	VOC RACT determination for Bath Iron Works.
134	Reasonably available control technology for facilities that emit volatile organic compounds.	4/26/01 7/2/01	5/20/02	[Insert FR citation from published date].	(c)(51)	VOC RACT determination for Pratt & Whitney.
134	Reasonably available control technology for facilities that emit volatile organic compounds.	5/10/01	5/20/02	[Insert FR citation from published date].	(c)(51)	VOC RACT determination for for Moosehead Manufacturing's Dover-Foxcroft plant.

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS—Continued

State	Title/subject	Adopted date by State	Approved date by EPA	Federal Register citation	52.1020	
	Reasonably available control technology for facilities that emit volatile organic compounds.	5/10/01	5/20/02	[Insert FR citation from published date].	(c)(51)	VOC RACT determination for for Moosehead Manufacturing's Monson plant.
	* * * * * * *					

[FR Doc. 02–12469 Filed 5–17–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[UT–001–0034a, UT–001–0035a; FRL–7201–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; Utah; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving two separate State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 17, 1998. The submittals repeal Utah's Air Conservation Regulations (UACR) R307–1–4.11 Regulation for the Control of Fluorides From Existing Plants and R307–2–28 Section XX, Committal SIP. In addition, the submittals revise R307–7 Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery. The intended effect of this action is to make federally enforceable those provisions of Utah's June 17, 1998 submittals that EPA is approving and to remove from the SIP those provisions that Utah has repealed. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on July 19, 2002 without further notice, unless we receive adverse comment by June 19, 2002. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket (6102), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''our,'' or ''us'' is used, we mean EPA.

Table of Contents

I. Summary of EPA's Actions

We are approving revisions to the SIP submitted by the Governor of Utah on June 17, 1998. Specifically, we are approving the repeal of UACR R307–1–4.11 Regulation for the Control of Fluorides From Existing Plants. This rule is obsolete and is no longer needed. We are also approving revisions to UACR R307–7 Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery. These revisions represent minor changes and corrections to cross references. In addition, we are taking no action on the submittal repealing R307–2–28 Section XX, Committal SIP since this rule was never approved by the EPA and thus was never part of the SIP.

II. What Is the State's Process To Submit These Materials To EPA?

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. We have evaluated the State's submission and determined that the necessary procedures were followed. We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act). Our completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. We attempt to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we do not determine completeness within six months after we receive it. These submissions became complete by operation of law on December 17, 1998 in accordance with section 110(k)(1)(B) of the Act.

A. R307–1–4.11 Regulation for the Control of Fluorides From Existing Plants

The Utah Air Quality Board held a public hearing on October 22, 1997, to repeal UACR R307–1–4.11 Regulation for the Control of Fluorides from Existing Plants from the SIP. The removal of UACR R307–1–4.11 became State effective on November 6, 1997 and was submitted by the Governor of Utah to us on June 17, 1998.

B. R307–2–28 Section XX, Committal SIP

The Utah Air Quality Board held a public hearing on October 22, 1997, to repeal UACR R307–2–28 which incorporates by reference Section XX, Committal SIP, from the SIP. The removal of UACR R307–2–28 Section XX from the SIP became State effective on November 6, 1997 and was submitted by the Governor of Utah to us on June 17, 1998.

C. R307–7 Exemption From Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery

The Utah Air Quality Board held a public hearing on September 19, 1996, to amend UACR R307–7 Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery. The revision to UACR R307–7 became State effective on November 15, 1996 and was submitted by the Governor of Utah to us on June 17, 1998.

III. Evaluation of the State's Submittal

A. R307–1–4.11 Regulation for the Control of Fluorides From Existing Plants

UACR R307–1–4.11 is entitled ''Regulation for the Control of Fluorides from Existing Plants.'' This rule was repealed by the State on November 6, 1997. Previously, we had incorporated this provision into the Federally approved SIP. Since fluoride emissions are not generally related to attainment or maintenance of the NAAQS, we are approving the deletion of UACR R307–1–4.11 from the SIP. In addition, UACR R307–1–4.11 only applied to the Chevron Chemical Company Phosphate Fertilizer Plant which was located in Salt Lake County. In a letter dated June 30, 1998, the State indicated that the plant has been dismantled, and the rule is no longer needed. We are approving the repeal of UACR R307–1–4.11 from Utah's SIP.

Additionally, since this rule was approved as meeting the 111(d) requirements for Fluorides from Existing Phosphate Fertilizer Plants, on January 30, 2002 the State submitted a letter indicating there were no phosphate fertilizer plants in Utah. Specifically, the letter indicated that there are no phosphate fertilizer plants in Utah that meet the definition of affected facility under 40 CFR part 60, subpart T, U, V, W or X, Standards of Performance for the Phosphate Fertilizer Industry. Additionally, there are no phosphate fertilizer plants in Utah that meet the definition of affected facility under 40 CFR part 62, subpart T, U, V, W or X, constructed before October 22, 1974, and that have not reconstructed or modified since 1974.[1] We are revising 40 CFR part 62, subpart TT to indicate that Utah has certified that it has no such sources.

B. R307–2–28 Section XX, Committal SIP

UACR R307–2–28 incorporates by reference Section XX, Committal SIP. Section XX committed the State to adopt certain measures to control ozone. This rule was never approved by the EPA based on the results of a lawsuit that disallowed the EPA's right to request committal SIPs. In addition, the committal SIP is now irrelevant since the EPA has approved Utah's Ozone Maintenance Plan. Since this rule was never approved into the SIP, we are taking no action on the June 17, 1998 submittal request to repeal R307–2–28.

C. R307–7 Exemption From Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery

UACR R307–7 is entitled ''Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery.'' This rule exempts certain sources from the notice of intent requirement (permit application) of R–307–1–3. This rule has been re-numbered to UACR R307–413–7 and re-titled ''Used Oil Burned for Energy Recovery,'' since the SIP revision was submitted. Under Utah Administrative Rulemaking Act, 63–46a–9, the State must review rules every five years. Following a review of this rule, SIP revisions were made to UACR R307–7 which clarify and update the rule. The SIP revision to UACR R307–7 includes the following minor clarifications and corrections:

1. Expands the definition of a boiler in R307–7–1 by including additional language that defines specific types of boilers,

2. Changes the record keeping requirements in R307–7–3 from two years to three years to be consistent with the Solid and Hazardous Waste Rule R315–15–4.7(d),

3. Clarifies the reference in R307–7–2 to R307–1–3,

4. Updates the statutory authorization at the end of the rule to reflect the separation of the Department of Environmental Quality from the Department of Health in 1991.

The revisions to UACR R307–7 are acceptable and we are approving them into the SIP. We caution that if sources are subject to more stringent requirements under the provisions of the Clean Air Act or other environmental statutes, our approval of the SIP revision does not excuse sources from meeting those other, more stringent, requirements. Note that EPA is not approving the renumbering and renaming of the rule at this time.

IV. Final Action

In this action, we are granting approval to repeal UACR R307–1–4.11 from Utah's SIP. We are also approving revisions to UACR R307–7 of Utah's SIP submitted by the Governor of Utah on June 17, 1998. We are taking no action on the request to repeal R307–2–28.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Utah SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because of the following: (1) Fluoride emissions are not related to attainment of the NAAQS and also there are no fluoride plants in Utah that meet the definition of affected facility under 40 CFR part 60; (2) revisions to R307–7 make the rule more stringent than the current rule and will enhance the State's efforts in implementing the Clean Air Act. Therefore, section 110(l) requirements are satisfied.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective July 19, 2002 without further notice unless the Agency receives adverse comments by June 19, 2002. If we receive adverse comments, then we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 19, 2002, and no further action will be taken on the proposed rule. Please note that if we

[1] The State letter references part 62. We believe they intended to reference part 60. Part 60 contains the performance standards and part 62 contains the approval status of state plans.

receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Fluoride, Intergovernmental relations, Phosphate, Reporting and recordkeeping requirements.

Dated: April 15, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(47) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(47) The Governor of Utah submitted a request to repeal sections R307–1–4.11 and R307–2–28, and revise R307–7of the Utah Air Conservation Regulations (UACR) on June 17, 1998. R307–1–4.11 is removed from the SIP. No action was taken on the repeal of R307–2–28 because it was never approved into the SIP.

(i) Incorporation by reference.

(A) UACR R307–7 effective November 15, 1996.

Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart TT—Utah

2. Section 62.11100 is revised to read as follows:

Fluoride Emissions from Existing Phosphate Fertilizer Plants

§ 62.11100 Identification of plan—negative declaration.

The Utah Department of Environmental Quality certified in a letter dated January 30, 2002 that there are no phosphate fertilizer plants in Utah that meet the definition of affected facility under 40 CFR part 60, subpart T, U, V, W or X, Standards of Performance for the Phosphate Fertilizer Industry.

Additionally, there are no phosphate fertilizer plants in Utah that meet the definition of affected facility under 40 CFR part 62, subpart T, U, V, W or X, constructed before October 22, 1974, and that have not reconstructed or modified since 1974.

(Note: the State referenced part 62 in the second sentence. We believe they meant part 60).

[FR Doc. 02–12413 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1603

Rules Implementing the Government in the Sunshine Act

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board adopts new regulations establishing the agency's procedures for implementing the Government in the Sunshine Act.

DATES: This rule is effective June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, (202) 261–7600.

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board''), as an agency headed by a collegial body composed of five members appointed by the President with the advice and consent of the Senate, is subject to the Government in the Sunshine Act (''Sunshine Act'' or ''Act''), 5 U.S.C. 552b. The Sunshine Act establishes standards for publicizing and permitting access to agency meetings, and for closing meetings to the public under certain conditions. The Act requires agencies to promulgate regulations to implement the statute's requirements.

In the **Federal Register** of April 8, 2002 (67 FR 16670), the CSB published a proposed rule setting forth its regulations for the implementation of the Sunshine Act. The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule, except for the correction of a technical error in § 1603.7(h).

This rule implements the requirements of the Sunshine Act. This rule mirrors the Sunshine Act regulations of many other agencies, most specifically, those of the National Transportation Safety Board (49 CFR part 804) and the Defense Nuclear Facilities Safety Board (10 CFR part 1704).

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

List of Subjects in 40 CFR Part 1603

Sunshine Act.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board adds a new 40 CFR part 1603 to read as follows:

PART 1603—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

Authority: 5 U.S.C. 552b; 42 U.S.C. 7412(r)(6)(N).

§ 1603.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. These procedures apply to meetings, as defined herein, of the Members of the Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'').

(b) This part does not affect the procedures by which CSB records are made available to the public, which continue to be governed by part 1601 of this chapter pursuant to the Freedom of Information Act, 5 U.S.C. 552, except that the exemptions set forth in § 1603.7 shall govern in the case of any requests made for the transcripts, recordings, and minutes described in § 1603.11.

§ 1603.2 Policy.

It is the policy of the CSB to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board, while protecting the rights of individuals and the ability of the Board to discharge its statutory functions and responsibilities. The public is invited to attend but not to participate in open meetings. For any open meeting, the Board, by majority vote, may decide to allow for a public comment period immediately following the close of that meeting.

§ 1603.3 Definitions.

As used in this part:

(a) *Days* means calendar days, except where noted otherwise.

(b) *General Counsel* means the Board's principal legal officer, or a CSB attorney serving as Acting General Counsel.

(c) *Meeting* means the deliberations of at least a quorum of Members where such deliberations determine or result in the joint conduct or disposition of official CSB business, and includes conference telephone calls or other exchanges otherwise coming within the definition. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by at least a quorum of Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to § 1603.7;

(ii) Set an agenda for a proposed meeting(s);

(iii) Call a meeting on less than seven days' notice as permitted by § 1603.9(b); or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under § 1603.10(b).

(3) A session attended by at least a quorum of Members for the purpose of having the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within

the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.

(4) A session attended by at least a quorum of Members for the purpose of having the Environmental Protection Agency or Occupational Safety and Health Administration (including contractors of those agencies) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not effectively predetermine official action.

(d) *Member* means an individual duly appointed and confirmed to the collegial body known as the Board.

(e) *Reporter* means a CSB employee designated by the General Counsel, under § 1603.5(c), to attend and prepare a written summary of all briefings described in paragraphs (c)(3) and (c)(4) of this section and all informal preliminary discussions described in paragraph (c)(5) of this section.

(f) *Sunshine Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 1603.4 Open meetings requirement.

Any meetings of the Board, as defined in § 1603.3, shall be conducted in accordance with this part. Except as provided in § 1603.7, the Board's meetings, or portions thereof, shall be open to public observation.

§ 1603.5 Assurance of compliance.

(a) The General Counsel or another attorney designated by the General Counsel will attend and monitor all briefings described in § 1603.3(c)(3) and (c)(4) and all informal preliminary discussions described in § 1603.3(c)(5), to assure that those gatherings do not proceed to the point of becoming deliberations and meetings for Sunshine Act purposes.

(b) The General Counsel or the designated attorney will inform the Board Members if developing discussions at a briefing or gathering should be deferred until a notice of an open or closed meeting can be published in the **Federal Register**, and a meeting conducted pursuant to the Sunshine Act and this part.

(c) For each briefing described in § 1603.3(c)(3) or (c)(4) and each informal preliminary discussion described in § 1603.3(c)(5), the General Counsel is hereby authorized to designate a CSB employee, other than the attorney referred to in paragraph (a) of this section, to serve as a reporter. An employee may be designated as reporter for a single briefing or informal discussion or for a series of briefings or discussions. The reporter shall attend and prepare a written summary of each briefing(s) or informal discussion(s) for which he/she has been designated. The reporter must prepare the summary of a particular briefing or informal discussion within five business days after the date of that briefing or discussion. The reporter must then submit the summary to the General Counsel or the designated attorney who attended the briefing or informal discussion that is the subject of the summary for review and approval as a fair and accurate summary of that briefing or discussion. The written summaries of briefings and informal discussions shall be maintained in the Office of General Counsel.

§ 1603.6 Business requiring a meeting.

The Board may, by majority vote of its Members, determine that particular items or classes of Board business cannot be accomplished by notation voting, but must instead be decided by a recorded vote at a meeting, as defined in § 1603.3(c).

§ 1603.7 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 1603.8, 1603.9, and 1603.10 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact, properly classified pursuant to such Executive Order. In making the determination that this exemption applies, the Board shall rely upon the classification assigned to a document by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency;

(b) Relate solely to the internal personnel rules and practices of the CSB;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the CSB, except that this paragraph shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the CSB's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the CSB of a particular case of formal agency adjudication

pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of that Act.

§ 1603.8 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A meeting shall not be closed, or information pertaining thereto withheld, unless a majority of all Members votes to take such action. A majority of the Board may act by taking a single vote with respect to any action under § 1603.7. A single vote is permitted with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in § 1603.7(e) through (g). Requests, with reasons in support thereof, should be submitted in writing, no later than two days before the meeting in question, to the General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037. In motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the CSB shall make available a written copy of such vote reflecting the vote of each Member on the question and, if a portion of a meeting is to be closed to the public, a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) Before every closed meeting, the General Counsel of the CSB shall publicly certify that, in his/her opinion, the meeting may be closed to the public and shall state each relevant exemption provision. If the General Counsel invokes the exemption for classified or sensitive unclassified information under § 1603.7(a), he/shall rely upon the classification or designation assigned to the document containing such information by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency. A copy of such certification, together with a statement setting forth the time and place of the meeting and the persons present, shall be retained by the Board as part of the transcript, recording, or minutes required by § 1603.11.

§ 1603.9 Procedures for public announcement of meetings.

(a) For each meeting, the CSB shall make public announcement, at least one week before the meeting, of:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of the meeting;

(4) Whether the meeting is to be open or closed; and

(5) The name and business telephone number of the offical designated by the CSB to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that CSB business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by § 1603.10, the CSB shall submit a notice of public announcement for publication in the **Federal Register**.

§ 1603.10 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement only if the CSB publicly announces such change at the earliest practicable time. Members need not approve such change.

(b) A meeting may be cancelled, or the subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement only if:

(1) A majority of all Members determines by recorded vote that CSB business so requires and that no earlier announcement of the cancellation or change was possible; and

(2) The CSB publicly announces such cancellation or change and the vote of each Member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

§ 1603.11 Transcripts, recordings, or minutes of closed meetings.

(a) Along with the General Counsel's certification referred to in § 1603.8(d), the CSB shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The CSB may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to § 1603.7(i). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any actions shall be identified in such minutes.

(b) The CSB shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any CSB proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

§ 1603.12 Availability of transcripts, recordings, and minutes, and applicable fees.

The CSB shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a meeting, except for such item, or items, of discussion or testimony as determined by the CSB to contain matters which may be withheld under the exemptive provisions of § 1603.7. Copies of the nonexempt portions of the transcript or minutes, or transcription of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. Requests for transcripts, recordings, or minutes shall be made in writing to the General Counsel of the CSB, 2175 K Street, NW., Suite 400, Washington, DC 20037.

§ 1603.13 Report to Congress.

The CSB General Counsel shall annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the

Government in the Sunshine Act, including any cost assessed against the Board in such litigation (whether or not paid by the Board).

§ 1603.14 Severability.

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Dated: May 14, 2002.

Christopher W. Warner,

General Counsel.

[FR Doc. 02–12529 Filed 5–17–02; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 051402B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 15, 2002, until 1200 hrs, A.l.t., June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) for the second season, the period April 1, 2002, through June 30, 2002, as 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ≥other species.≥

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action because the second seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion because the second seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12572 Filed 5–15–02; 4:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 97
Monday, May 20, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

RIN 3245–AE91

New Markets Venture Capital Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (''SBA'') proposes to make several amendments to the regulations for the New Markets Venture Capital (''NMVC'') program. The majority of the proposed amendments make technical changes to the regulations, to correct typographical errors or to clarify language. SBA also proposes to make five substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas. Generally, the five changes would:

Allow a New Markets Venture Capital company (''NMVC company'') to include in its regulatory capital SBA-approved organizational and management expenses paid on behalf of the NMVC company before the company is finally approved;

Allow SBA, in selecting recipients for NMVC program assistance, to compare applications from specialized small business investment companies (''SSBICs'') with NMVC company applications from the same or proximate low-income geographic areas (''LI areas'');

Create rules governing fees an NMVC company or its associates may charge for management services provided to small businesses in which the NMVC company invests;

Revise the application process for SSBICs so as to make it more parallel with the application process for NMVC companies; and

Add a requirement that NMVC companies must use at least 80 percent of their grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises located in an LI area at the time the operational assistance commenced.

DATES: Comments must be received on or before June 19, 2002.

ADDRESSES: Address all comments concerning this proposed rule to Austin Belton, Director of New Markets Venture Capital, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Peter C. Gibbs, Deputy Director of New Markets Venture Capital, (202) 205–7574.

SUPPLEMENTARY INFORMATION:

I. Background

The New Markets Venture Capital Program Act of 2000 (''the Act'') was created by the Consolidated Appropriations Act of 2001, Public Law 106–554, enacted December 21, 2000. SBA published in the **Federal Register** a final rule implementing the Act on May 23, 2001 (66 FR 28602) and a technical correction on June 19, 2001 (66 FR 32894).

SBA has conducted a first application round for the NMVC program, and selected seven companies as conditionally approved NMVC companies. The amendments proposed in this rule would apply to those seven companies as well as to applicants for the NMVC program in future application round(s) and to entities SBA selects for participation in the NMVC program as a result of any future application round(s).

II. Section-by-Section Analysis

SBA proposes to amend three of the definitions in § 108.50. The definitions of ''New Markets Venture Capital Company'' and ''Participation Agreement'' would be amended to correct typographical errors.

The definition of ''Regulatory Capital'' would be amended to simplify it by consolidating into § 108.230, which addresses private capital, all the current restrictions on what may be included in regulatory capital. The proposed definition would state that regulatory capital is private capital, excluding any portion of private capital that the NMVC company designates as grant matching resources.

SBA proposes to amend paragraphs (b), (c), and (d) of § 108.230. In paragraph (b), SBA proposes to make a technical change. The word ''contributed'' would be revised to read ''paid-in,'' to indicate more clearly that only capital contributions actually made are considered ''contributed capital'' for purposes of § 108.230.

SBA proposes to amend paragraph (c) by adding a new subparagraph (5) to move to this section language concerning questionable commitments that currently is in the definition of regulatory capital in § 108.50. This is a non-substantive change.

SBA proposes to revise paragraph (d) to allow NMVC companies to include in private capital SBA-approved organizational and management expenses paid on behalf of an NMVC company prior to SBA's final approval of the NMVC company. SBA intends to provide guidance on the limitations by percentage and/or dollar amounts on such expenses that SBA will approve for inclusion in private capital. Other non-cash assets, such as ''pre-licensing investments,'' would continue to not be allowed for inclusion in private capital. SBA previously determined that such non-cash assets would not be acceptable for inclusion in regulatory capital (see discussion on this subject in the preamble to the proposed rule implementing the Act, 66 FR 20536, April 23, 2001, and the preamble to the final rule implementing the Act, 66 FR 28603, May 23, 2001).

SBA proposes to make technical changes to § 108.310 to more clearly articulate what an NMVC company applicant must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The proposed amendment would require an applicant to state specific amounts of regulatory capital and grant matching resources, both of which must comply with the statutory minimums established by the Act. SBA also proposes to make a minor technical change to § 108.320.

SBA proposes to amend § 108.360(k) to allow SBA, when making selections as to which applicants will receive conditional approval, to compare the applications submitted by NMVC company applicants to the applications submitted by SSBICs that intend to invest in the same or proximate LI areas. This change would allow SBA to more effectively utilize limited NMVC program appropriations. This change

also would increase the potential for achieving the nationwide distribution of the NMVC program's benefits that the Act directs.

SBA proposes to make three technical changes to § 108.380. Proposed changes to subsections (a)(1)(i)(A) and (a)(1)(i)(B), would more clearly state that the amounts of regulatory capital and grant match applicants must raise before they can be finally approved are the exact same amounts that they said they would raise in their applications. SBA proposes to amend subsection (b)(3) to correct a typographical error.

SBA proposes to add new § 108.900, based in part on § 107.900 for the small business investment company (SBIC) program, governing fees for management services and similar services (for example, negotiating bank debt, sale of the company, or a lease, or structuring an employee stock ownership plan) charged by an NMVC company or its associates to small businesses that the NMVC company finances. The proposed regulation would require SBA's prior written approval of all such fees charged. The proposed regulation states that it does not apply to operational assistance that an NMVC company or its associate provides to a business that the NMVC company has financed or in which it expects to make a financing, and that the NMVC company may not charge the business a fee for such operational assistance. SBA expects an NMVC company to use its grant funds (both SBA funds and grant matching resources) to cover the costs of providing such operational assistance.

This proposed regulation also would require that at least 50 percent of all such fees paid to an associate (as defined in 13 CFR 108.50) of an NMVC company by a small business must be allocated back to the NMVC company for its benefit. SBA understands that an NMVC company or its associate (for example, its management company) may want to provide management and other services to the NMVC company's portfolio companies and charge a fee for such services. It may be in the best interests of the small business that the NMVC company or its associate provide such services rather than an outside third party. However, SBA believes that the NMVC company's manager should share equally with the NMVC company the financial benefit (i.e., fees) of providing those services, since that relationship (of the manager to the NMVC company) is what brought about the opportunity for the manager to obtain that financial benefit. In addition, SBA believes that neither the NMVC company itself nor the NMVC program in general is well served if the focus of the NMVC company's manager is on fee generation rather than managing the NMVC company. SBA believes that a 50–50 allocation of such fees between the NMVC company manager and the NMVC company itself strikes an appropriate balance between these objectives and reflects what knowledgeable private investors often require in commercial equity venture capital funds.

SBA proposes to remove § 108.2000 and replace it with several smaller, more easily readable sections, §§ 108.2000–108.2007. Proposed § 108.2000 (currently § 108.2000(a)) would provide a more comprehensive list of the regulations applicable to operational assistance grants to NMVC companies and to SSBICs. Proposed § 108.2001 (currently § 108.2000(b)(1) and (b)(3)(i)) is unchanged in content.

Proposed § 108.2002 (currently § 108.2000(b)(2)) includes several technical corrections. First, the term ''Developmental Venture Capital Investments'' would be replaced with ''Low-Income Investments'' in new subsections (a) and (c). The term ''Low-Income Investments'' already is defined in § 108.50, and more accurately reflects the statutory requirement that an SSBIC must use all of its new capital raised for the NMVC program, to make equity capital investments in smaller enterprises located in LI areas. Second, the phrase ''after December 21, 2000'' would be added to the end of new subsection (c), to incorporate the NMVC program statutory effective date and make more clear that an SSBIC may use operational assistance grant funds only in connection with investments it makes after such date.

Proposed § 108.2003 (currently § 108.2000(b)(3)(ii)) is unchanged in content. Proposed § 108.2004 (currently § 108.2000(b)(4)(i) and (ii)) would make technical changes to more clearly articulate what an SSBIC must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The proposed regulation would require that an SSBIC state specific amounts of regulatory capital and grant matching resources, and that the amount of grant matching resources comply with the statutory minimum established by the Act.

Proposed § 108.2005 (currently § 108.2000(b)(4)(ii)(A) through (G)) would replace the term ''Developmental Venture Capital Investments'' with ''Low-Income Investments'' in new subsections (a), (c), (d) and (f), for the reasons described above. Subsections (a) and (d) would add new requirements that an SSBIC identify specific LI areas in which it intends to make investments and provide operational assistance, and specify how much of its investments it will make in each of the specified LI areas. These requirements parallel the information required from NMVC company applicants, and will allow SBA to better determine the potential impact on specific LI areas, when making selections as to recipients of NMVC program benefits.

Proposed § 108.2006 (currently § 108.2000(b)(5)) would replace the term ''Developmental Venture Capital Investments'' with ''Low-Income Investments'' in new subsection (d), for the reasons described above. The proposed regulation also would allow SBA to add an interview component to its selection process, paralleling SBA's current authority to require an interview with NMVC company applicants (see 13 CFR 108.340). SBA is considering interviewing applicants in future application rounds. In new subsection (h), SBA proposes a change to allow SBA, when making selections as to which SSBICs conditionally will receive an operational assistance grant, to compare the applications submitted by SSBICs to the applications submitted by NMVC company applicants that intend to invest in the same or proximate LI areas. This change would allow SBA to more effectively utilize limited NMVC program appropriations. This change also would increase the potential for achieving the nationwide distribution of the NMVC program's benefits contemplated by the Act.

Proposed § 108.2007 (currently § 108.2000(b)(6)) is unchanged in content.

Proposed § 108.2010 would add a new paragraph (b) (and redesignate paragraph (b) as paragraph (c)) requiring that an NMVC company must use at least 80 percent of its grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises whose principal office is located in an LI area at the time the operational assistance commences.

The Act explicitly requires that all operational assistance funded by the NMVC program go only to smaller enterprises. The proposed regulation would impose an additional requirement that a specific percentage, 80 percent, of such operational assistance provided by NMVC companies go to businesses located in LI areas. This requirement serves to maximize the impact of the operational assistance funded by SBA on the LI areas targeted for assistance through the NMVC program. This proposed 80 percent requirement also parallels the

existing regulatory requirement (see 13 CFR 108.710(a)) that NMVC companies must use at least 80 percent of its capital (both funds from SBA and private capital) to make equity capital investments in smaller enterprises located in an LI area at the time the investment is made.

SBA proposes to revise redesignated paragraph (c) to correct the title of the part of the Federal Acquisition Regulations containing the definition of G&A expense.

Technical amendments are proposed to §§ 108.2020(b), 108.2030(c)(2)(iii), 108.2030(c)(2)(iv), 108.2030(d)(2), and 108.2040(a) to correct cross-references to other sections in this part and to clarify requirements. The proposed changes to § 108.2030(c) would allow grant matching resources to be payable over a multiyear period not to exceed the term of the grant from SBA, and in no event more than 10 years. This change would provide support for SBA to allow an applicant to request a specific grant term, within a range acceptable to SBA and as long as it did not exceed the 10 year limit set forth in the Act, rather than having SBA establish one allowable grant term for all applicants. This would give each NMVC company and selected SSBIC greater flexibility to determine how best to use operational assistance funds from SBA to accomplish its mission. This proposed change is made possible by a change in the law governing SBA's appropriation for the NMVC program. On July 24, 2001, Congress passed a supplemental appropriations bill (Pub. L. 107–20) that extended the availability of the funds appropriated to SBA for the NMVC program.

III. Regulatory Compliance Section—Compliance With Executive Orders 12866, 12988, and 13132; With the Paperwork Reduction Act (44 U.S.C. Ch. 35); and With the Regulatory Flexibility Act (5 U.S.C. 601–612)

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. A regulatory assessment of the potential costs and benefits of the regulatory action follows. Because this is a new program and no NMVC Companies are operational yet, SBA does not have relevant data to estimate actual dollar values for these proposed amendments. However, SBA welcomes comments from the public regarding the potential costs and benefits of the proposed amendments.

The NMVC program is an equity venture capital program designed to promote the economic development of, and address the unmet equity capital needs of smaller enterprises located in, LI areas. The program has a one-time no-year appropriation of $52 million to fund newly formed NMVC companies. To date, seven applicants have been selected as conditionally approved NMVC companies. SBA anticipates a second application round, and the proposed amendments concerning the application process would affect applicants in the second round. The proposed amendments that concern participation in the program would apply to all NMVC companies selected through both application rounds and SSBICs applying under the second application round.

This rule proposes to make several amendments to the existing regulations implementing the program. Most of the amendments are technical changes that would have no impact on the costs associated with the program to the Government or to the program beneficiaries. After SBA's first year of experience in creating and administering this new program, SBA also proposes a few substantive changes which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted LI areas and businesses. SBA believes that these changes will result in reduced operational costs for the program to both the government, the NMVC companies, and to the beneficiary small businesses financed by the NMVC companies with SBA leverage.

The most significant change SBA proposes is to add a requirement that NMVC companies must use at least 80% of the SBA grant funds (and the required match funding from non-SBA sources) to assist smaller enterprises whose principal office is in an LI area. This is consistent with the existing requirement on the use of an NMVC company's capital. This change would ensure that the primary impact of the grant would be on the LI areas targeted by the NMVC program. It also would have the effect of assisting smaller enterprises in LI areas to qualify for equity investment, or otherwise enabling such enterprises to grow at no cost to such businesses.

SBA's experience over the past year indicates that some NMVC companies may charge management services fees to smaller enterprises in connection with investments made by the NMVC company, but SBA's existing regulations are silent in this area. SBA believes that adding a regulation governing such fees will give SBA the necessary tools to ensure that smaller enterprises are not being charged too much for such services and that an NMVC company's management is not motivated solely by fee generation. SBA proposes to add section 108.900 which would place limits on such fees, require SBA's advance approval, and require that at least 50% of any fees charged by the fund manager be for the benefit of the NMVC company.

SBA also proposes several changes to clarify the application requirements for SSBICs to participate in the NMVC program and to do so on a parallel basis as NMVC companies. For example, one change would require SSBICs to identify specific LI areas they are targeting, thereby allowing comparison with any NMVC applicant for the same LI area and avoiding duplicative coverage of a LI area. The overall results of these changes are to ensure even-handed treatment of SSBICs and NMVC companies, maximize the nationwide impact of the NMVC program, and achieve greater administrative efficiency in program administration.

SBA also proposes to clarify that SBA will permit SBA-approved organizational and management expenses incurred prior to SBA's final approval of the NMVC company to be credited in whole or part against the regulatory capital the NMVC company is required to raise. This credit would be in lieu of an NMVC company being required to pay out cash at its outset for the same pre-approved costs. This change will improve the efficiency of an NMVC company's operations and prevent unnecessary paperwork on the part of the NMVC company, which will streamline the program. This change also would bring the NMVC program in line with the SBIC program and with best practices of the private venture fund industry in this area.

In sum, the proposed changes will result in more NMVC program funds going to smaller enterprises in LI areas, in line with the legislative intent, and greater cost-effectiveness and efficiency in SBA's administration of the NMVC program to execute the congressional mandate.

Compliance With Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that order.

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this

proposed rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs. The regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this proposed rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule imposes new information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The proposed rule includes two new collections of information: (1) A request for prior SBA approval of management services fees and other fees and (2) concerning the application process for SSBICs, an additional component to the plan for use of the operational assistance grant, and an interview component. These information collections are described in more detail below.

Simultaneously with the publication of this rule in the **Federal Register**, SBA will make the collection available to the public by posting it on SBA's Web site at *http://www.sba.gov/inv.* You also may request a copy by calling Peter Gibbs at (202) 205–7574 or writing to him at Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

SBA seeks comment on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information SBA proposed to collect; and (4) ways to minimize the burden on respondents of the proposed collection of information, including through the use of automated collection techniques or other forms of information technology.

Please send comments, by the closing date for comment on this proposed rule, to David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, and to Austin Belton, Director of New Markets Venture Capital, Investment Division, U.S. Business Administration, 409 Third Street, SW., Washington, DC 20416.

1. SBA proposes the following new information collection, applicable only to NMVC companies finally approved by SBA for participation in the NMVC program:

Title: Request for SBA Approval of Management Services Fees and Other Fees (SBA Form Number not yet assigned; see proposed § 108.900 for reference).

Need and purpose: Through the use of this new form, SBA will collect information from an NMVC company that seeks SBA's prior approval for the NMVC company or its associates to charge certain fees to small businesses that the NMVC company finances (i.e., fees for management services, services on a business's board, or services related to certain kinds of transactions). SBA will collect this information at the time the NMVC company requests SBA prior approval of such fees. SBA will use the information collected to evaluate the NMVC company's request.

Burden: An NMVC company will complete this information collection only when it desires to charge certain fees to small businesses. Some NMVC companies may not desire to charge such fees to the small businesses it finances; others may desire to charge such fees to every such small business. SBA estimates that each NMVC company (SBA estimates that there will be 15 NMVC companies participating in the program) may complete this collection one time per year, for a total of 15 respondents per year. SBA estimates that the time needed to complete this collection will average four hours, and that the cost to complete this collection will be approximately $75.00 per hour, for a total estimated aggregated burden of 60 hours per year costing an aggregated $4,500.00 per year.

2. SBA proposes the following two new information collections, applicable only to SSBICs applying for an operational assistance grant under the NMVC program:

a. SBA proposes to add one item to the list of topics an SSBIC applicant must address in its plan for use of the operational assistance grant.

Title: Identification of LI Areas (no SBA Form Number will be assigned; see proposed § 108.2005(c) for reference).

Need and purpose: SBA will collect information from an SSBIC applicant concerning the specific geographic areas in which the SSBIC intends to make investments and provide operational assistance under the NMVC program. SBA will collect this information at the time the SSBIC applies for an operational assistance grant. SSBIC applicants will be directed to use a geographic mapping/searching function, available on SBA's Web site, to create maps and related information in order to respond to this information collection. SBA will use the information collected to evaluate the potential impact of the SSBIC's proposed activities on low-income geographic areas identified by the SSBIC, when SBA makes selections of which applicants will receive NMVC program benefits.

Burden: An SSBIC applicant will complete this information collection only once, when it applies for a grant under the NMVC program. SBA estimates that three SSBIC applicants likely will submit applications in response to any subsequent application rounds that SBA holds, for a total of three respondents per year (during a year in which SBA holds an application round). SBA estimates that the time needed to complete this collection will average 15 minutes, and that the cost to complete this collection will be approximately $75.00 per hour, for a total estimated aggregated burden of 45 minutes per year costing an aggregated $56.00 per year.

b. SBA proposes to add an interview component to the application process for SSBIC applicants.

Title: Interview Questions for NMVC Company and SSBIC Applicants (SBA Form Number not yet assigned; see proposed § 108.2006 for reference).

Need and purpose: SBA will collect information from an SSBIC applicant through an interview, during which SBA will ask a set of standardized questions of all SSBIC applicants (SBA will ask a slightly different set of standardized questions of all NMVC company applicants). The questions will concern the applicant's proposed use of operational assistance grant resources to develop small businesses located in low-income geographic areas. SBA will collect this information during a 90-minute interview with an SSBIC applicant's self-selected representatives, shortly after the SSBIC applies for an operational assistance grant. SBA will use the information collected to evaluate the potential impact of the SSBIC's proposed activities on low-income geographic areas identified by the SSBIC, when SBA makes selections of which applicants will receive NMVC program benefits.

Burden: An SSBIC applicant will complete this information collection

only once, when it applies for a grant under the NMVC program. SBA estimates that three SSBIC applicants likely will submit applications in response to any subsequent application rounds that SBA holds, for a total of three respondents per year (during a year in which SBA holds an application round). SBA estimates that the time needed to complete this collection will average 90 minutes, and that the cost to complete this collection will be approximately $75.00 per hour, for a total estimated aggregated burden of 4.5 hours per year costing an aggregated $338.00 per year.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–602

Under the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

The NMVC program is expected to result in the creation of fewer than 20 NMVC companies. The program's impact will be felt to a greater extent on the small businesses that the NMVC companies invest in and assist through this program. The Act authorizes $150 million to guarantee debentures to NMVC companies, which will result in a discounted amount of approximately $100 million with which NMVC companies can make investments, and $30 million for operational assistance grants to NMVC companies and SSBICs. In addition, NMVC companies must raise capital totaling $100 million, and NMVC companies and SSBICs must raise grant matching resources totaling $30 million. Thus, the total net funding for the NMVC program, including matching funds raised by NMVC companies and SSBICs, is $260 million. Based upon industry practices, it is likely that the funds will be disbursed over a five to seven year period. A NMVC company's minimum life is 10 years and NMVC companies' investments are typically made during their first five to seven years of existence. Generally, a NMVC company will fund three or at most four businesses in one year out of the 20 to 30 businesses it will fund over its life. Therefore, NMVC program funds will flow out to businesses at a rate of approximately $50 million per year.

The average size of an investment by a community development company is approximately $300,000. Based upon total funding of $260 million and an average investment in a small business of $300,000, approximately 867 small businesses will be affected by this program during the lives of the NMVC companies authorized by the Act. Based upon 1997 Economic Census data, SBA estimates that there are approximately 25 million small businesses in the United States and 867 constitutes less than 1% of those businesses.

Further, NMVC companies must invest in ''smaller enterprises'' which are defined as businesses with a net worth not greater than $6 million and average net income of not greater than $2 million. Based upon an average investment of $300,000, an investment in a business with a net worth of $6 million would equate to 5% of the business's net worth. Additionally, industry practices indicate that while the average investment in a particular business is $300,000, this amount may not be disbursed all at once. The average investment per round in the industry is approximately $185,000, which is only 3% of the business's net worth.

List of Subjects in 13 CFR Part 108

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 108 as follows.

PART 108—NEW MARKETS VENTURE CAPITAL (''NMVC'') PROGRAM

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 689—689q.

2. Amend § 108.50 by:

a. Revising the citation in paragraph (1) of the definition of *New Markets Venture Capital Company* or *NMVC Company* from ''§ 108.390'' to ''§ 108.380'';

b. Revising the citation in the introductory text of the definition of *Participation Agreement* from ''§ 108.390'' to ''§ 108.380''; and

c. Revising the definition of *Regulatory Capital.*

The revision reads as follows:

§ 108.50 Definition of terms.

* * * * *

Regulatory Capital means Private Capital, excluding any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

* * * * *

3. Amend § 108.230 by:

a. Revising paragraph (b);

b. Adding paragraph (c)(5); and

c. Revising paragraph (d).

The addition and revisions read as follows:

§ 108.230 Private Capital for NMVC Companies.

* * * * *

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' paid-in capital of a LLC NMVC Company, or the partners' paid-in capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) * * *

(5) A commitment from an investor if SBA determines that the collectability of the commitment is questionable.

(d) *Limitations on including non-cash capital contributions in Private Capital.* Private Capital does not include capital contributions in a form other than cash, except as provided in this paragraph (d). Subject to SBA's prior approval, Private Capital may include payments made on behalf of an Applicant or Conditionally Approved NMVC Company before the Applicant or Conditionally Approved NMVC Company becomes a NMVC Company for organizational expenses and Management Expenses incurred by the Applicant or the Conditionally Approved NMVC Company prior to its becoming a NMVC Company.

* * * * *

4. Revise § 108.310(a) to read as follows:

§ 108.310 Contents of application.

* * * * *

(a) *Amounts.* The Applicant must indicate—

(1) The specific amount of Regulatory Capital it proposes to raise (which amount must be at least $5,000,000); and

(2) The specific amount of binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than $1,500,000 or 30 percent of the Regulatory Capital it proposes to raise under paragraph (a)(1) of this section, whichever is greater).

* * * * *

5. Revise the second sentence of § 108.320(g) to read as follows:

§ 108.320 Contents of comprehensive business plan.

* * * * *

(g) * * * If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions

exceed 50 percent of the total contributions). * * *

* * * * *

6. Revise § 108.360(k) to read as follows:

§ 108.360 Evaluation criteria.

* * * * *

(k) The strength of the Applicant's application compared to applications submitted by other Applicants and by SSBICs intending to invest in the same or proximate LI Areas.

7. Revise § 108.380(a)(1)(i)(A), (a)(1)(i)(B), and the last sentence in (b)(3) to read as follows:

§ 108.380 Final approval as a NMVC Company.

(a) * * *

(1) * * *

(i) * * *

(A) The amount of Regulatory Capital set forth in its application, pursuant to § 108.310(a)(1); and

(B) The amount of matching resources for its Operational Assistance grant award set forth in its application, pursuant to § 108.310(a)(2); and

* * * * *

(b) * * *

(3) * * * Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC Company if such Conditionally Approved NMVC Company does not raise the required amount of Regulatory Capital within the time period SBA gave it to do so.

8. Add a new undesignated centerheading and § 108.900 to subpart I to read as follows:

Management Services and Fees

§ 108.900 Fees for management services provided to a Small Business by a NMVC Company or its Associate.

(a) *General.* This § 108.900 applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to a Financing. It does not apply to management services that your Associate provides to a Small Business that you do not finance. It also does not apply to Operational Assistance that you or your Associate provide to a Smaller Enterprise that you have Financed or in which you expect to make a Financing, for which neither you nor your Associate may charge the Smaller Enterprise.

(b) *SBA approval.* You must obtain SBA's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management services fees.* You or your Associate may provide management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business; and

(5) At least 50 percent of any management services fees paid to your Associate by a Small Business for management services provided by the Associate is allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may charge a Small Business Financed by you for services provided as members of the Small Business' board of directors. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. Fees may be in the form of cash, warrants, or other payments. At least 50 percent of any such fees paid to your Associate by a Small Business for service by the Associate as a board member must be allocated back to you for your benefit.

(e) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed such as preparing a Small Business for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Fees may be in the form of cash, notes, stock, and/or options. At least 50 percent of any such fees paid to your Associate by a Small Business for transactions work done by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

(f) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

9. Revise § 108.2000 and add new §§ 108.2001 through 108.2007 to read as follows:

§ 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in subparts D and E of this part, and in §§ 108.2010 through 108.2040.

(b) *SSBICs.* Regulations governing Operational Assistance grants to SSBICs may be found in §§ 108.2001 through 108.2040.

§ 108.2001 When and how SSBICs may apply for Operational Assistance grants.

(a) *Notice of Funds Availability (''NOFA'').* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(b) *Application form.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

§ 108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.

An SSBIC is eligible to apply for an Operational Assistance grant if:

(a) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Low-Income Investments in the amount of such increase;

(b) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (a) of this section; and

(c) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Low-Income Investments after December 21, 2000.

§ 108.2003 Grant issuance fee for SSBICs.

An SSBIC must pay to SBA a grant issuance fee of $5,000. An SSBIC must submit this fee in advance, at the time of application submission. If SBA does not award a grant to the SSBIC, SBA will refund this fee to the SSBIC.

§ 108.2004 Contents of application submitted by SSBICs.

Each application submitted by an SSBIC for an Operational Assistance grant must contain the information specified in the application packet provided by SBA, including the following information:

(a) *Amounts.* An SSBIC must specify the amount of Regulatory Capital it intends to raise after December 21, 2000, and the amount of Operational Assistance grant funds it seeks from SBA, which must be at least 30 percent of its intended increase in its Regulatory Capital since December 21, 2000.

(b) *Plan.* An SSBIC must submit a plan addressing the specific items described in § 108.2005.

§ 108.2005 Contents of plan submitted by SSBICs.

(a) *Plan for providing Operational Assistance.* The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Low-Income Investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(b) *Matching resources for Operational Assistance grant.* The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(c) *Identification of LI Areas.* The SSBIC must identify the specific LI Areas in which it intends to make Low-Income Investments and provide Operational Assistance under the NMVC program.

(d) *Projected amount of investment in LI Areas.* The SSBIC must describe the amount of Low-Income Investments it intends to make in each of the identified LI Areas.

(e) *Track record of management team in obtaining public policy results through investments.* The SSBIC must provide information concerning the past track record of the SSBIC in making investments that have had a demonstrable impact on the socially or economically disadvantaged businesses targeted by the SSBIC program (for example, new businesses created, jobs created, or wealth created). Such information might include case studies or examples of the SSBIC's successful Financings.

(f) *Market analysis.* The SSBIC must provide an analysis of the LI Areas in which it intends to make its Low-Income Investments and provide its Operational Assistance to Smaller Enterprises, demonstrating that the SSBIC understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Low-Income Investments and have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. The SSBIC also must analyze the extent of the demand in such areas for Low-Income Investments and any factors or trends that may affect the SSBIC's ability to make effective Low-Income Investments.

(g) *Regulatory Capital.* The SSBIC must include a detailed description of how it plans to raise its Regulatory Capital. The SSBIC must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the SSBIC.

(h) *Projected impact.* The SSBIC must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(2) A description of the criteria to be used to measure the benefits created as a result of its activities; and

(3) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

§ 108.2006 Evaluation and selection of SSBICs.

SBA will evaluate and select an SSBIC for an Operational Assistance grant award under the NMVC program solely at SBA's discretion, based on SBA's review of the SSBIC's application materials, interviews or site visits with the SSBIC (if any), and information in SBA's records relating to the SSBIC's regulatory compliance status and track record as an SSBIC. SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will evaluate and select SSBICs for an Operational Assistance grant award by considering the following criteria:

(a) The strength of the SSBIC's application, including the strength of its proposal to provide Operational Assistance to Smaller Enterprises in which it intends to invest;

(b) The SSBIC's regulatory compliance status and past track record in being able to accomplish program goals through its investment activity;

(c) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in § 108.2005(b) and (g);

(d) The need for Low-Income Investments in the LI Areas in which the SSBIC intends to invest;

(e) The SSBIC's demonstrated understanding of the markets in the LI Areas in which it intends to invest;

(f) The extent to which the activities proposed by the SSBIC will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas;

(g) The likelihood that the SSBIC will fulfill the goals described in its application and meet the objectives of the NMVC program; and

(h) The strength of the SSBIC's application compared to applications submitted by other SSBICs and by Applicants intending to invest in the same or proximate LI Areas.

§ 108.2007 Grant award to SSBICs.

An SSBIC selected for an Operational Assistance grant award will receive a grant award only if, by a date established by SBA, it increases its Regulatory Capital in the specific amount set forth in its application, pursuant to § 108.2004(a), and raises matching resources for the grant in the amount required by § 108.2030(d)(2).

10. Amend § 108.2010 by redesignating paragraph (b) as paragraph (c) and revising it and adding a new paragraph (b) to read as follows:

§ 108.2010 Restrictions on use of Operational Assistance grant funds.

* * * * *

(b) *Restrictions applicable only to NMVC Companies.* A NMVC Company must use at least 80 percent of both grant funds awarded by SBA and its matching resources to provide Operational Assistance to Smaller Enterprises whose Principal Office at the time the Operational Assistance commences is located in an LI Area.

(c) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC

Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for ''general and administrative expense,'' as defined in the Federal Acquisition Regulations, ''Definitions of Words and Terms,'' 48 CFR 2.101.

§ 108.2020 [Amended]

11. Revise the citation in § 108.2020(b) from ''§§ 108.2000 and 108.2030'' to ''§§ 108.2007 and 108.2030''.

12. Revise § 108.2030(c)(2)(iii), (c)(2)(iv), and (d)(2) to read as follows:

§ 108.2030 Matching requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years); and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years).

(d) * * *

(2) *SSBICs.* The amount of matching resources required of an SSBIC is equal to the amount of Operational Assistance grant funds requested by the SSBIC, as set forth in its application pursuant to § 108.2004(a).

13. Revise § 108.2040(a) to read as follows:

§ 108.2040 Reporting and recordkeeping requirements.

(a) *NMVC Companies.* Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part. NMVC Companies also must comply with all reporting, record retention, and recordkeeping requirements set forth in Circular A–110 of the Office of Management and Budget (For availability, see 5 CFR 1310.3.) and any grant award document executed between SBA and the NMVC Company.

* * * * *

Dated: May 9, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–12198 Filed 5–17–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–400 and DG–800A Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Models DG–400 and DG–800A sailplanes. This proposed AD would require you to inspect the rear plate of the propeller mount for marks and/or cracks and replace if necessary. This proposed AD would also require you to inspect the mounting blocks for cracks and replace if necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to detect and correct cracks in the propeller mount plate and mounting blocks, which could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–12–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–12–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257–890; facsimile: ++49 7257–8922. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–12–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified FAA that an unsafe condition may exist on all Model DG–400 and DG–800A sailplanes. The LBA reports that cracks have been found on the rear plate of the propeller mount on

one DG–400 sailplane. The cracks were found during regular maintenance. Models DG–400 and DG–800 sailplanes are equipped with the same propeller mount structure.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if left undetected and corrected, could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

DG Flugzeugbau has issued Technical Note No. 826/42, dated August 30, 2001, which applies to Model DG–400 sailplanes, and Technical Note No. 873/25, dated August 30, 2001, which applies to Model DG–800A sailplanes.

What are the Provisions of This Service Information?

These technical notes include procedures for inspecting the rear plate of the propeller mount for marks and/or cracks and replacing if necessary, and inspecting the mounting blocks for cracks and replacing if necessary.

What Action Did the LBA take?

The LBA classified these technical notes as mandatory and issued German AD 2001–346, dated December 13, 2001, and German AD 2001–340, dated December 13, 2001, in order to ensure the continued airworthiness of these sailplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other DG Flugzeugbau Models DG–400 and DG–800A sailplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many sailplanes would this proposed AD impact?

We estimate that this proposed AD affects 43 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	43 × $60 = $2,580

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of sailplanes that may need such replacement:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $60 per hour = $120	$400	$120 + $400 = $520

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of the proposed inspection is ''within the next 25 hours time-in-service (TIS) or 3 calendar months after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 2002–CE–12–AD

(a) *What sailplanes are affected by this AD?* This AD affects Models DG–400 and DG–800A sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the propeller mount plate, which could result in reduced structural integrity of the propeller mounting structure This could lead to a hazardous flight condition or loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Accomplish the following inspections: (i) Inspect the rear plate of the propeller mount for cracks and any marks made by the mounting bolt washer; and (ii) Inspect the mounting blocks for the rear plate of the propeller mount for cracks.	Inspect within the next 25 hours time-in-service (TIS) or 3 calendar months after the effective date of this AD, whichever occurs first.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001, or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable maintenance manual.
(2) Accomplish the following if cracks and/or marks are found during the inspections required in paragraph (d)(1) of this AD: (i) If a mark made by the mounting bolt washer is found and the mark is 0.1 mm deep or less and no cracks are found on the rear plate of the propeller mount, polish out the mark using standard maintenance practices; (ii) If a mark made by the moutning bolt washer is found and the mark is more than 0.1 mm deep and/or cracks are found on the rear plate of the propeller mount, replace the rear plate with a new one. Use new bolts and washers as required by paragraph (d)(3) of this AD; and (iii) If cracks are found on the mounting block(s) of the rear plate of the propeller mount, replace the mounting block(s) with a new one. Use new bolts and washers as required by paragraph (d)(3) of this AD.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001, or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(3) Reinstall the rear plate of the propeller mount to the mounting blocks using new bolts, M10×25 DIN912–8.8zn with the aluminum washer S48 (or FAA-approved equivalent parts)	Prior to further flight after the inspections required in paragraph (d)(1) of this AD and/or after the replacements required in paragraph (d)(2) of this AD.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001, or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(4) Do not install any rear propeller mount plate mounting bolts that are not bolts M10×25 DIN912–8.8zn with the aluminum washer S48 (or FAA-approved equivalent parts)	As of the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 2001–346, dated December 13, 2001, and German AD 2001–340, dated December 13, 2001.

Issued in Kansas City, Missouri, on May 10, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12520 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Diamond Aircraft Industries GmbH (Diamond) Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC-ECO, HK 36 TTC-ECO (Restricted Category), and HK 36 TTS sailplanes. This proposed AD would require you to inspect the long aileron push rods in both wings for damage and modify the push rods. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this proposed AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 17, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–11–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I be Sure FAA Receives My comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–11–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Austro Control GmbH (Austro Control), which is the airworthiness authority for Austria, recently notified FAA that an unsafe condition may exist on all Diamond Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. The Austro Control reports during the preflight of one sailplane, the long aileron push rod was found to be broken. On several sailplanes, the aileron push control rods in both wings were found damaged due to contact or interference with the support for the aileron bellcrank.

What Are the Consequences if the Condition Is Not Corrected?

If the damaged aileron push control rods are not detected and corrected, the damage could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

Is there service information that applies to this subject?

Diamond has issued:

—Service Bulletin No. MSB36–72, dated February 1, 2002; and

—Work Instruction No. WI–MSB36–72, dated February 1, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the long aileron push rods in both wings; and

—Modifying the long aileron push rods.

What Action Did the Austro Control Take?

The Austro Control classified this service bulletin as mandatory and issued Austrian AD Number 111, dated February 26, 2002, in order to ensure the continued airworthiness of these sailplanes in Austria.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These sailplane models are manufactured in Austria and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the Austro Control has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the Austro Control; reviewed all

available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Diamond Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Why Is a Compliance of 10 Hours Time-in-Service (TIS) Used for the Inspection of the Long Aileron Push Rods?

Normally, FAA uses a 10-hours TIS compliance time for urgent safety of flight conditions. However, sailplane operation varies among operators. It might take operators between 3 months to 12 months or more to accumulate 10 hours TIS. For this reason, FAA has determined that compliance time of this proposed AD should be 10 hours TIS to ensure this condition is corrected in a timely manner but does not unduly penalize operators.

Cost Impact

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 45 sailplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour=$60	None	$60 per airplane	$60 × 45 = $2,700

We estimate the following costs to accomplish any necessary modification that would be required based on the results of the proposed inspection.

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$80	$200	$9,000

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Diamond Aircraft Industries GMBH: Docket No. 2002–CE–11–AD

(a) *What sailplanes are affected by this AD?* This AD affects the following sailplane models, all serial numbers, that are certificated in any category:

Model

H–36 ''Dimona''
HK 36 R ''Super Dimona''
HK 36 TC
HK 36 TS
HK 36 TTC
HK 36 TTC–ECO
HK 36 TTC–ECO (Restricted Category)
HK 36 TTS

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the long aileron push rods in both wings.	Within the next 10 hours time-in-service (TIS) after the effective date of this AD.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002, Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002, and the applicable sailplane maintenance manual.
(2) If any long aileron push rods are found damaged during the inspection required in paragraph (d)(1) of this AD, modify the push rods.	Before further flight, after the inspection in paragraph (d)(1) of this AD.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002, Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002, and the applicable sailplane maintenance manual.
(3) If no damage is found during the inspection required in paragraph (d)(1), modify the push rods.	Within the next 25 hours TIS after effective date of this AD.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002, Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002, and the applicable sailplane maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Austrian AD No. 111, dated February 26, 2002.

Issued in Kansas City, Missouri, on May 10, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12519 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–322–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require a one-time inspection of the aft edge of the left and right main windshields to determine whether a certain placard is installed, and corrective actions if necessary. This action is necessary to prevent failure of the main windshields due to stress-related cracking, which could cause cabin depressurization and emergency descent, and adversely affect continued safe flight of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–322–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–322–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street,

Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–322–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–322–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that a significant number of cracking incidents have occurred in the inner and middle panes of the main windshields during taxi, takeoff, climb, cruise, and descent of the airplane. In addition, frequent cracking incidents during flight have resulted in emergency descent, which poses an increased risk to passengers and crew members. Findings indicate that most of the windshield failures are due to excessive stress at the lower forward corner of the windshield. Failure of the main windshields due to stress-related cracking, if not corrected, could cause cabin depressurization and emergency descent, and adversely affect continued safe flight of the airplane.

Background Information

Until a new design for the main windshield can be developed by the manufacturer and approved by the FAA, operators have requested procedures for modifying the existing windshields to address the identified unsafe condition and to improve service performance. In response, the manufacturer has conducted tests on windshield units similar to those used on in-service airplanes, and on windshield units fitted with reduced diameter fasteners (hi-lok pins with a reduced diameter shank). Findings indicate that the test units with reduced diameter fasteners did not fracture, unlike the windshield units fitted with the original diameter fasteners. Results of analysis and testing indicate that installation of reduced diameter fasteners in the lower forward corner of the windshield can reduce the stress in that area and increase the service life of the windshield. Findings also indicate that windshields with low flight cycles have a greater risk of windshield failure. As a result, the manufacturer recommends the ''expeditious accomplishment'' of applicable corrective actions for airplanes subject to this AD and equipped with certain windshield units that have accumulated fewer than 2,500 total flight cycles. This recommendation is based on the manufacturer's statistical analysis of the failure rate of those windshields, and also on the tests conducted on the windshields.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R–56–004, dated August 16, 2001, which describes procedures for an inspection of the left and right main windshields to determine the part number of the placard installed on the aft edge of the windshields. If a placard having the correct part number is found, no further action is specified. If a placard having the incorrect part number is found, the service bulletin describes procedures for modifying the main windshields. The Bombardier service bulletin references PPG Industries, Inc., Service Bulletin CSB-NP–139321–002, Revision C, dated July 31, 2001, as a secondary source of service information for modifying the main windshields by replacing nine of the hi-lok pins installed in the lower forward corner of the windshields with hi-lok pins having a reduced diameter shank, installing a placard having the correct part number on the inner retainer near the part identification placard located along the aft edge of the window, and replacing any torn or deformed gasket.

TCCA classified the Bombardier service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–35R1, dated September 27, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusion

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Bombardier service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin/Canadian Airworthiness Directive

Operators should note that the Canadian airworthiness directive and Bombardier Service Bulletin specify a compliance time of 12 months for the one-time inspection, and modification if necessary. However, this proposed AD would require a compliance time of 6 months after the effective date of this AD to accomplish the one-time general visual inspection, and any necessary

modification. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection, and modification if necessary. In light of these factors, the FAA finds a compliance time of 6 months after the effective date of this AD to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 339 Model CL–600–2B19 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 214 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $12,840, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the corrective actions, it would take approximately 1 work hour per airplane to accomplish at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the corrective actions is estimated to be $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–322–AD.

Applicability: Model CL–600–2B19 series airplanes; certificated in any category; serial numbers 7003 and subsequent; equipped with main windshield units, part numbers 601R33033–1, –2, –5, –6, –9, or –10.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main windshields due to stress-related cracking, which could cause cabin depressurization and emergency descent, and adversely affect continued safe flight of the airplane; accomplish the following:

Inspection and Corrective Action

(a) For airplanes equipped with windshield units that have accumulated fewer than 2,500 total flight cycles as of the effective date of this AD: Within 6 months after the effective date of this AD, accomplish a one-time general visual inspection of the aft edges of the left and right main windshields to determine whether a placard having part number (P/N) CSB–NP–139321–002–1 is installed, per the Accomplishment Instructions of Bombardier Service Bulletin 601R–56–004, dated August 16, 2001.

(1) If a placard having P/N CSB–NP–139321–002–1 is installed, no further action is required by this AD.

(2) If a placard having a part number other than CSB–NP–139321–002–1 is installed, before further flight, accomplish the corrective actions (including modifying the main windshields by replacing nine of the hi-lok pins installed in the lower forward corner of the windshields with hi-lok pins having a reduced diameter shank, installing a placard having the correct part number on the inner retainer near the part identification placard located along the aft edge of the window, and replacing any torn or deformed gasket), per the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Bombardier Service Bulletin 601R–56–004, dated August 16, 2001, references PPG Industries, Inc., Service Bulletin CSB-NP–139321–002, Revision C, dated July 31, 2001, as an additional source of service information for accomplishment of the modification of the left and right main windshields.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–35R1, dated September 27, 2001.

Issued in Renton, Washington, on May 13, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12518 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 737–100, 737–200, and 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727, 737–100, 737–200, and 737–200C series airplanes. This proposal would require a one-time inspection to determine the part number of hydraulic accumulators installed in various areas of the airplane, and follow-on corrective actions, if necessary. This action is necessary to prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 5, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–19–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–19–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of several incidents on various Boeing Model 747 series airplanes, and one incident on a Boeing Model 737–200 series airplane, in which aluminum end caps on hydraulic accumulators have fractured. One incident resulted in an injury to a maintenance worker. Fracture of the aluminum end caps has been attributed to fatigue cracking caused by stress corrosion or tooling marks. Fracture of an end cap could lead to a rupture of a hydraulic accumulator, which could result in high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members.

Certain Boeing Model 727 and Model 737–100, -200, and -200C series airplanes have hydraulic accumulators with aluminum end caps installed in various areas of the airplane. Therefore, all of these airplanes could be subject to the same unsafe condition described previously.

Other Relevant Rulemaking

The FAA previously has issued AD 2000–14–01, amendment 39–11810 (65 FR 44670, July 19, 2000). That AD applies to certain Boeing Model 747 series airplanes and requires replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps. That AD is intended to prevent high-velocity separation of a brake system accumulator barrel, piston, or end cap, which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Special Attention Service Bulletins:

- 727–29–0064, Revision 1, dated May 3, 2001, which concerns hydraulic accumulators in hydraulic systems ''A'' and ''B'' of certain Model 727 series airplanes.
- 727–32–0410, Revision 2, dated January 24, 2002, which concerns a hydraulic accumulator in the landing gear brake system of certain Model 727 series airplanes.
- 727–52–0148, Revision 2, dated January 24, 2002, which concerns a hydraulic accumulator in the aft airstairs of certain Model 727–200 series airplanes.
- 737–32–1334, Revision 1, dated March 1, 2001, which concerns a hydraulic accumulator in the landing gear brake system of certain Model 737–100, –200, and –200C series airplanes.

These service bulletins describe procedures for a one-time inspection to determine the part number of installed hydraulic accumulators, and follow-on corrective actions. Corrective actions in Service Bulletins 727–29–0064, Revision 1, and 737–32–1334, Revision 1, include replacement of hydraulic accumulators that have aluminum end caps with new or modified accumulators that have stainless steel end caps. For airplanes equipped with hydraulic accumulators with certain part numbers, corrective actions in Service Bulletins 727–32–0410, Revision 2, and 727–52–0148, Revision 2, include replacement of existing mounting clamps and hardware for the hydraulic accumulators with stronger clamps and hardware. For airplanes equipped with hydraulic accumulators with certain other part numbers, corrective actions in Service Bulletins 727–32–0410, Revision 2, and 727–52–0148, Revision 2, include replacement of hydraulic accumulators that have aluminum end caps with new or modified accumulators that have stainless steel end caps, in addition to replacement of existing mounting clamps and hardware.

Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition.

Boeing Service Bulletin 727–29–0064, Revision 1, refers to Parker Service Bulletin 1356–603303–29–60, dated January 9, 2001, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Boeing Service Bulletin 727–29–0064. Similarly, Revision 2 of Boeing Service Bulletins 727–32–0410 and 727–52–0148 refer to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per those Boeing service bulletins. Also, Revision 1 of Boeing Service Bulletin 737–32–1334 refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per that Boeing service bulletin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletins described previously.

Cost Impact: Required Actions

There are approximately 1,832 Model 727 series airplanes and 1,033 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,294 Model 727 series airplanes and 376 Model 737 series airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed one-time inspection on U.S. operators is estimated to be $100,200, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Cost Impact: On-Condition Actions

For an airplane subject to the replacement per Boeing Service Bulletin 727–29–0064, we estimate that it would take approximately 5 work hours per accumulator (two hydraulic system accumulators per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $1,400 (new part) and $2,810 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $1,700 and $3,110 per accumulator.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–32–0410, we estimate that it would take approximately 6 work hours per airplane to accomplish (one landing gear brake accumulator per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–52–0148, we estimate that it would take approximately 6 work hours per airplane (one aft airstairs hydraulic accumulator per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement per Boeing Service Bulletin 737–32–1334, we estimate that it would take approximately 5 work hours per accumulator (two landing gear hydraulic brake accumulators per airplane) to accomplish, at an average labor rate of $60 per work hour.

Required parts would cost between $2,175 (operator-modified part) and $2,410 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,475 and $2,710 per accumulator.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–19–AD.

Applicability: Model 727 series airplanes, line numbers (L/N) 1 through 1832 inclusive; and Model 737–100, –200, and –200C series airplanes, L/N 1 through 1033 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator; which could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members; accomplish the following:

Inspection/Corrective Action: Service Bulletin 727–29–0064

(a) For airplanes listed in Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, dated May 3, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the part numbers (P/Ns) of hydraulic accumulators in hydraulic systems ''A'' and ''B,'' per the service bulletin.

(1) If no hydraulic accumulator with Parker P/N 1356–603303 is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with Parker P/N 1356–603303 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin.

Note 2: Inspections and replacements done prior to the effective date of this AD per Boeing Special Attention Service Bulletin 727–29–0064, dated June 8, 2000, are considered acceptable for compliance with the corresponding actions in this AD.

Note 3: Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, refers to Parker Service Bulletin 1356–603303–29–60, dated January 9, 2001, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–29–0064.

Inspection/Corrective Action: Service Bulletin 727–32–0410

(b) For airplanes listed in Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the landing gear brake system, per the service bulletin.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware; and replace the subject hydraulic accumulator with a new or modified accumulator; as applicable; per the service bulletin.

Note 4: Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–32–0410.

Inspection/Corrective Action: Service Bulletin 727–52–0148

(c) For airplanes listed in Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the aft airstairs, per the service bulletin.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware; and replace the subject hydraulic accumulator with a new or modified accumulator; as applicable; per the service bulletin.

Note 5: Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–52–0148.

Inspection/Corrective Action: Service Bulletin 737–32–1334

(d) For airplanes listed in Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, dated March 1, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/Ns of the hydraulic accumulators in the

landing gear brake system, per the service bulletin.

(1) If no hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin.

Note 6: Inspections and replacements done prior to the effective date of this AD per Boeing Special Attention Service Bulletin 737–32–1334, dated May 11, 2000, are considered acceptable for compliance with the corresponding actions in this AD.

Note 7: Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 737–32–1334, Revision 1.

Spares

(e) As of the effective date of this AD, no one may install a hydraulic accumulator with a P/N listed in paragraph (a)(2), (b)(2), (c)(2), or (d)(2) of this AD on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 13, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12517 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0311b; FRL–7202–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of nitrogen oxides (NO_X) and carbon monoxide (CO) from electric power generating steam boilers. We are proposing to approve a local rule under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 19, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local BAAQMD Rule 9–11. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule.

Dated: April 17, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–12411 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN66–01–7291b; FRL–7206–4]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum, LLC (Marathon Ashland), located in the cities of St. Paul Park and Newport, Washington County, Minnesota. The Minnesota Pollution Control Agency requested in their February 6, 2000, submittal that EPA approve into the Minnesota SO_2 SIP certain portions of the Title V permit for Marathon Ashland and remove the Marathon Ashland Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, we are proposing to approve into the SIP only those portions of the permit cited as ''Title I condition: SIP for SO_2 NAAQS 40 CFR pt. 50 and Minnesota State Implementation Plan (SIP).'' In addition, we are proposing to remove the Marathon Ashland Administrative Order from the state SO_2 SIP. In the final rules section of the **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not

institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 19, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, *see* the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: March 08, 2002.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 02–12415 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–066–7015b; A–1–FRL–7171–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; New CTGs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements for certain facilities which emit volatile organic compounds (VOCs). The intended effect of this action is to approve these requirements into the Maine SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 19, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–12470 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–1–7552; FRL–7213–4]

Proposed Approval and Promulgation of Implementation Plans; Louisiana; Contingency Measures for the Baton Rouge (BR) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone non-attainment area submitted by the State of Louisiana for the purpose of replacing the previously approved contingency measures in the Demonstration of Attainment. These replacement measures meet the requirements in sections 172(c)(9) and 182(c)(9) of the Clean Air Act (the Act) as amended in 1990. We are proposing approval of replacement contingency measures that would require emission reductions from the Trunkline Gas Company—Patterson Compressor Station in St. Mary Parish to replace the State's current contingency measure requirements. Currently, the State's contingency measure requirement is that it hold 5.7 tons/day of VOC emission reductions ''on deposit'' in the State of Louisiana Emission Reduction Credit Bank (ERC Bank). The replacement contingency measure that the EPA proposes to approve would require that the Trunkline facility permanently reduce its volatile organic compound (VOC) emissions by 6.1 tons/day from 1990 emission levels. These reductions are surplus and federally enforceable.

DATES: Written comments must be received on or before June 19, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana. Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

What Action Are We Taking Today?

On February 27, 2002, the Governor of Louisiana submitted to EPA a revision to the Baton Rouge SIP requesting that the current contingency measures contained in the Attainment Demonstration be replaced with substitute contingency measures. The current contingency measures for the Attainment Demonstration require that the State escrow at least 5.7 tons/day of VOC (3 percent of the adjusted base year inventory of 191.2 tons/day) in its Emission Reduction Credit (ERC) Bank. EPA approved these VOC reductions as creditable towards the 3 percent contingency requirement for the Demonstration of Attainment. (64 FR 35930, July 2, 1999.)

This revision substitutes 6.1 tons/day in VOC emission reductions from the Trunkline Gas Company for the previously approved measure. The EPA is proposing to approve this revision to the Louisiana SIP to regulate emissions of VOCs in accordance with the requirements of the Act. For more information on the SIP revision, please refer to the State's February 27, 2002, SIP revision and EPA's TSD.

What Are the Clean Air Act Requirements?

Section 172(c)(9) and 182 (c)(9) of the Act require that SIPs contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date, or to meet rate-of-progress (ROP) deadlines. The Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of 172(c)(1) and 182(c)(2)(A) in the April 16, 1992, General Preamble for Implementation of the Act (*See* 57 FR 13498, 13510, April 16, 1992). In that guidance EPA indicated that states with moderate and above ozone nonattainment areas, such as the Baton Rouge area, should include sufficient contingency measure so that, upon implementation of such measures, additional emission reductions of up to three percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. The State must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

Why Is Louisiana Submitting a Substitute Contingency Measure?

We previously approved a contingency measures plan as satisfying section 172(c)(9) and 182(c)(9) of the Act (64 FR 35930, July 2, 1999). The contingency plan consisted of 5.7 tons/day of VOC ERCs held in escrow in the Louisiana ERC Bank that would be confiscated by the State and no longer available for use in the event of a milestone failure or if attainment was not achieved in a timely manner. In August 1999, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit challenging our July 2, 1999, SIP approval. *Louisiana Environmental Action Network* v. *EPA,* No. 99–60570. In response to the litigation, we requested a partial voluntary remand to reconsider that final approval of the State's contingency measures plan for the Baton Rouge area. On October 19, 2000, the Fifth Circuit Court of Appeals granted a Joint Motion for a Partial Voluntary Remand.

The State has submitted this contingency measure as a substitute for the ERC bank contingency measure. This proposal, and any final action taken pursuant to it, serve as EPA's response with respect to the voluntary remand.

Does the Substitute Measure Meet All Applicable Requirements?

The State is using excess reductions that accrued in 1998 at the Trunkline facility to meet the contingency measure requirement. In guidance issued in 1993 [1], we allow the use of surplus reductions that have already been achieved before the failure has been identified to serve as contingency measures in the year after the failure for attainment and ROP plans. If an area then fails to meet a milestone which triggers the implementation of contingency measures, the state would have one year to backfill the contingency measure. *See* 57 FR 13498, 13511 (April 16, 1992). The State ensured that the VOC reductions relied on as the contingency measure have not been used anywhere else in the 2005 attainment demonstration.

Because the Trunkline Gas Company—Patterson Compressor Station in St. Mary Parish is not in the Baton Rouge nonattainment area, the State followed EPA's policy guidance [2] allowing 1-hour ozone nonattainment areas to take credit in plans for emission reductions obtained from sources outside the designated nonattainment area, provided that the sources are no farther away than 100 km (for VOC sources) or 200 km (for NO_X sources) from the nonattainment area. The Patterson Compressor Station is only 40 km from the Baton Rouge nonattainment area, and, as such, its reductions are available for use as credit in the contingency measures plan. In addition, in accordance with the guidance, the emissions from this source, which is outside the nonattainment area, were included in the 1990 base year emissions inventory for the nonattainment area.

The contingency measure plan requirement for the Attainment Demonstration is 3 percent of the 1990 adjusted base year VOC inventory. Therefore, in order to use the emission reductions available from Trunkline, the State added the emissions from the facility back into the 1990 inventory.[3] When the inventory was adjusted to include the Trunkline emissions, the new 3 percent requirement for contingency measures became 6.1 tons/day of VOC emission reductions.

These reductions are available because the Trunkline facility installed a flare in 1998 to dispose of flash gases from several storage containers to comply with Louisiana's waste gas disposal rule and comprehensive toxic air pollutant control program. This was an alternative to combustion in a furnace or closed combustion chamber. The destruction efficiency of the open air flare is estimated at 99 percent.

After the installation of the flare, VOC emissions changed from 13.4 tons/day to 0.4 tons/day. The resulting 13 tons/day of emission reductions are creditable. To ensure that these emission reductions are permanent and Federally enforceable, the State revised emission limit is reflected in the permit issued to Trunkline. The permit makes the additional emission reductions available for SIP purposes, *i.e.,* surplus, permanent, and enforceable. 6.1 tons/day of this 13 ton/day reduction will be credited to contingency measures and will no longer be available for any other use. Because the 6.1 tons/day from the Trunkline facility is greater than the 5.7 tons/day in the prior contingency

[1] Memorandum, ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide in Nonattainment Areas,'' from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 13, 1993.

[2] Memorandum: Guidance for Implementing the 1–Hour Ozone and Pre-Existing PM10 NAAQS. Richard D. Wilson, December 29, 1997 (signature date).

[3] The EPA recognizes that adding the Trunkline emission back into the 1990 emissions inventory will also impact the 9 percent and the 15 percent ROP Plan targets. These adjustments are discussed in the TSD and will be dealt with in the ROP plans.

measure, this SIP revision also complies with section 110(l) of the Act.

Proposed Action

Because the substitute contingency measure submitted in this SIP revision meets all the requirements for contingency measures and other SIP requirements, we are proposing approval of a substitute contingency measure for the Baton Rouge ozone nonattainment area. We are proposing to approve 6.1 tons/day of VOC emissions, as obtained from the issuance of a permit to Trunkline, as the substitute contingency measure. If we finalize this action, those 6.1 tons/day of VOC emissions from Trunkline are no longer available for any other uses, *e.g.,* netting.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 7, 2002.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 02–12616 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[UT–001–0034b, UT–001–0035b; FRL–7201–4]

Clean Air Act Approval and Promulgation of State Implementation Plan; Utah; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve two separate revisions to the State Implementation Plan (SIP) submitted by the Governor of Utah on June 17, 1998. The submittals repeal Utah's Air Conservation Regulations (UACR) R307–1–4.11 Regulation for the Control of Fluorides From Existing Plants and R307–2–28 Section XX, Committal SIP. In addition, the submittals revise R307–7 Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery. The intended effect of this action is to make federally enforceable those provisions of Utah's June 17, 1998 submittals that EPA is approving and to remove from the SIP those provisions that Utah has repealed. This action is being taken under section 110 of the Clean Air Act (CAA).

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is acting on the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before June 19, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150

North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 15, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–12412 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7214–1]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Rocky Flats Environmental Technology Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Rocky Flats Environmental Technology Site (RFETS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–39, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste streams, characterization systems and processes at RFETS to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of June 3, 2002.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before June 19, 2002.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Mail Code 6102, Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1 a.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–260–4400; e-mail: a-and-r-docket@epa.gov).

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our website at http://www.epa/gov/radiation/wipp.

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the waste characterization systems and processes for TRU waste at RFETS in accordance with Conditions 2 and 3 of the WIPP certification. Specifically, we will be inspecting new equipment—a mobile real-time radiography unit and the Multi Purpose Crate Counter for gamma and neutron analysis. We will also evaluate acceptable knowledge (AK) and batch data reports for newly generated waste. The inspection is scheduled to take place the week of June 3, 2002.

EPA has placed a number of documents pertinent to the inspection in the public docket described in **ADDRESSES.** The documents are listed as Item II–A2–39 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed waste streams, processes, systems, and equipment at RFETS adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship TRU waste to WIPP using the approved characterization processes. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air

Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: May 14, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–12684 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 97
Monday, May 20, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on June 19–20, 2002. The first day is a field trip to view recreation-related topics on the Mt. Hood National Forest. The second day will be a joint business meeting with the Willamette PAC beginning 8 a.m. and ending 3:30 p.m. at the Alton Collins Retreat Center at 2867 SE Highway 211 in Eagle Creek, Oregon. Topics include Subcommittee updates/Round Robin, a Presentation on Recreation Strategy, an Update on NW Forest Plan, and a Public Forum from 3–3:30.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE. 3rd., Bend, OR, 97701, Phone (541) 383–4769.

Dated: May 9, 2002.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 02–12510 Filed 5–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on June 4, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on June 4, 2002 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the sixth meeting of the committee, and will focus on the process reviewing and approving Title II project proposals from the public. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: May 13, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–12532 Filed 5–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Power Association; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to the construction and operation of an 85-megawatt electric generation unit in Jones County, Mississippi. South Mississippi Electric Power Association proposes to construct and operate the unit. RUS may provide financing for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at: *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: South Mississippi Electric Power Association proposes to construct an additional single, 85-megawatt, simple-cycle, gas-fired electric generation unit at South Mississippi Electric Power Association's Moselle Generating Station. The Moselle Generation Station is located approximately 1 mile north of Moselle in Jones County, Mississippi. No additional electric transmission lines or natural gas pipelines will need to be constructed for this project.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. Joey Ward, South Mississippi Electric Power Association, 7037 U.S. Highway 49, North, Hattiesburg, Mississippi 39404–5849, telephone (601) 268–2083. Mr. Ward's e-mail address is *jward@smepa.com.*

Dated: May 14, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–12578 Filed 5–17–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on August 1, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers or comments by the public.
3. Update on the Wassenaar Arrangement.
4. Report on committee proposal to include the 5-axis exclusion note from

the Nuclear Suppliers Group control list in the Wassenaar Arrangement control list.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address:

Ms. Lee Ann Carpenter, OSIES/EA/BIS MS:3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 30, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: May 13, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–12531 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 4, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Working group activity reports.
5. Update on Wassenaar Arrangement proposals.
6. Discussion of Automated Export regulations and Option 5 proposal.
7. Discussion on status of pending encryption regulations.
8. Review of revised deemed export license conditions.
9. Review of Simplified Network Application Process (SNAP) 2002 status.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 12, 2001, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: May 14, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–12530 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner at (202) 482–6320 or (202) 482–3814 respectively, AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 2001).

FINAL DETERMINATION:

We determine that polyethylene terephthalate film, sheet, and strip (PET film) from Taiwan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margin of sales at LTFV is shown in the Suspension of Liquidation section of this notice.

Case History

On December 21, 2001, the Department published the preliminary determination of the antidumping duty investigation of PET film from Taiwan. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan,* 66 FR 65889 (December 21, 2001) (*Preliminary Determination*). The

investigation covers two manufacturers/exporters, Nan Ya Plastics Corporation, Ltd. (Nan Ya), and Shinkong Synthetic Fibers Corporation (Shinkong). The petitioners in this investigation are Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America) (collectively, the petitioners).

We conducted verification of the questionnaire responses of the respondents, Nan Ya during the weeks of January 28, 2002 and February 8, 2002, and Shinkong during the weeks of February 25, 2002, and March 4, 2002. We gave interested parties an opportunity to comment on our *Preliminary Determination* and our findings at verification. On April 8, 2002, one respondent, Shinkong, and the petitioners, submitted case briefs. On April 12, 2002, Shinkong and the petitioners submitted rebuttal briefs. Nan Ya submitted its rebuttal brief on April 16, 2002. The Department received requests for a public hearing from both petitioners and Shinkong. A public hearing was held on April 17, 2002.

The Department has conducted this investigation in accordance with section 731 of the Act.

Scope of Investigation

For purposes of these investigations, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 2000, through March 31, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2001).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*), dated May 6, 2002, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 (B–099) of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margins in this proceeding. These adjustments are discussed in detail in the *Decision Memorandum* and are listed below:

Nan Ya

(1) We determined that Nan Ya is affiliated with two of its U.S. customers and that Nan Ya's sales through these customers should be treated as constructed export price sales. *See Decision Memorandum at comment 4.*

(2) We recalculated home market inventory carrying costs to reflect changes from verification. *See* Calculation Memorandum of the Final Determination of the Investigation of Nan Ya Plastics Corporation, Ltd. (May 6, 2002)

(3) We adjusted Nan Ya's reported per-unit cost to attribute a portion of the total cost difference and stop loss expenses attributable to PET film production. *See* Cost of Production and Constructed Value Calculation Adjustments Memorandum for the Final Determination (May 6, 2002).

4) We increased Na Ya's reported per-unit conversion costs. *Id.*

Shinkong

(1) We revised home market and U.S. indirect selling expenses to reflect changes from verification. *See*Calculation Memorandum of the Final Determination of the Investigation of Shinkong Synthetic Fibers Corporation (May 6, 2002) (Shinkong's Calculation Memorandum).

(2) We recalculated home market credit expenses to reflect changes from verification. *Id.*

(3) We recalculated home market inventory carrying costs to reflect changes from verification. *Id.*

(4) We recalculated the general and administrative (G&A) expense ratio to reflect changes from verification. *See* Shinkong's Calculation Memo.

(5) We recalculated the interest expense ratio to reflect changes from verification. *Id.*

(6) We revised the total cost of manufacture (TOTCOM) to reflect changes from verification. *See* Issues and Decision Memorandum at comment 9. *See* also Shinkong's Calculation Memorandum.

(7) We recalculated U.S. credit expenses to reflect changes from verification. *See* Shinkong's Calculation Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Suspension of Liquidation

Because Nan Ya received a *de minimis* weighted-average margin in the preliminary determination, but an above *de minimis* margin in the final determination, pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to suspend liquidation of all entries of subject merchandise from Nan Ya that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this final determination in the **Federal Register**. For Shinkong and all other companies, we are directing Customs to continue to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 21, 2001, the date of publication of the preliminary determination. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Nan Ya Plastics Corporation, Ltd.	2.70
Shinkong Synthetic Fibers Corporation	2.05
All Others	2.56

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 6, 2002

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

Appendix Issues in Decision Memorandum

Comments

1. Nan Ya's Yield Ratios
2. Nan Ya's PET Film Productivity
3. Nan Ya's Product-Specific Costs
4. Nan Ya's Relationship With U.S. Customers
5. Nan Ya's Recycled Packing Costs
6. Nan Ya's Sales Quantities
7. Shinkong's Home Market Sales Made to Port
8. Shinkong's Packing Costs
9. Shinkong's Certified Public Accountant (CPA) adjustments

[FR Doc. 02–12575 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (64 FR 40560 (July 27, 1999)). On March 19, 2002, ThyssenKrupp Mexinox S.A. de C.V., formerly Mexinox S.A. de C.V., informed the Department of its corporate name change effective February 25, 2002, and requested that the Department initiate and conduct an expedited changed circumstances review. Based on information provided in its March 19, 2002 letter, we preliminarily determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor firm to Mexinox S.A. de C.V.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On July 27, 1999, the Department published the antidumping duty order on stainless steel sheet and strip in coils from Mexico. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 40560 (July 27, 1999). In a March 19, 2002 letter to the Department, ThyssenKrupp Mexinox S.A. de C.V. requested that the Department initiate and conduct an expedited changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether it is the successor-in-interest to Mexinox S.A. de C.V. for purposes of the antidumping duty order on stainless steel sheet and strip in coils from Mexico, and to issue preliminary results concurrently with the notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, ThyssenKrupp Mexinox S.A. de C.V., formerly Mexinox S.A. de C.V., notified the Department that effective February 25, 2002, its corporate name had changed to ThyssenKrupp Mexinox S.A. de C.V., and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base are identical to those of the former Mexinox S.A. de C.V. Citing the Department's determination in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513 (December 31, 2001) (*S4 from Korea Changed Circumstances Review*), ThyssenKrupp Mexinox S.A. de C.V. claimed the Department should determine that it is the successor-in-interest to Mexinox S.A. de C.V.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note''' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36''.[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by

[1] ''Arnokrome III''' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Initiation and Preliminary Resudlts of Changed Circumstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Tariff Act, the Department is initiating a changed circumstances administrative review to determine whether ThyssenKrupp Mexinox S.A. de C.V. is the successor company to Mexinox S.A. de C.V. In making such a determination, the Department examines several factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base. *See, e.g., S4 from Korea Changed Circumstances Review*, 66 FR 67513, 67515. While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See, e.g., Industrial Phosphoric Acid from Israel Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for purposes of antidumping liability, *e.g.*, assign the same cash deposit rate, revocation, *etc.*

We have examined the information provided by ThyssenKrupp Mexinox S.A. de C.V. in its March 19, 2002 letter and determine that ThyssenKrupp Mexinox S.A. de C.V. has established a *prima facie* case that it is the successor-in-interest to Mexinox S.A. de C.V. As shown in Attachments 7, 8 and 9, respectively, the Board of Directors, management, and organizational structure of the former Mexinox S.A. de C.V. have remained intact. Attachments 3 and 6 confirm there has been no change in ownership. As determined in the original investigation of stainless steel sheet and strip in coils from Mexico, the former Mexinox S.A. de C.V. was a privately-held company; ThyssenKrupp Mexinox S.A. de C.V. is a also privately held company with an ownership structure identical to that found in the most recently-completed administrative review of stainless steel sheet and strip in coils from Mexico. Attachment 5 demonstrates there has not been a change in the location of the production facilities, and Attachments 11 and 12, respectively, show there have been no changes in the customer or supplier base. Finally, ThyssenKrupp Mexinox S.A. de C.V. has provided sufficient documentation of the name change. *See*, *e.g.*, Attachment 4 (notarized amendments to Articles of Incorporation changing corporate name) and Attachment 5 (registration of corporate name change with Mexican tax authorities). Therefore, we preliminarily determine that ThyssenKrupp Mexinox S.A. de C.V. has maintained the same management, production facilities, supplier relationships, and customer bases as did Mexinox S.A. de C.V. Based upon the foregoing, we preliminarily determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V. and we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii). If there are no changes in the final results of the changed circumstances review, ThyssenKrupp Mexinox S.A. de C.V. shall retain the antidumping duty cash deposit rate assigned to Mexinox S.A. de C.V. in the most recent administrative review of the subject merchandise.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Public Comment

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 10 days of publication of this notice. Case briefs and/or written comments from interested parties may be submitted no later than 21 days after the date of publication of this notice. Rebuttal briefs and rebuttals comments, limited to the issues raised in those case briefs or comments, may be filed no later than 28 days after the publication of this notice. All written comments must be submitted and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first working day thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish in the **Federal Register** a notice of final results of this changed circumstances antidumping duty administrative review, including the results of its analysis of any issues raised in any written comments.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this changed circumstances review, unless a change is determined to be warranted pursuant to the final results of this review.

We are issuing and publishing this finding and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: May 13, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–12589 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel wire rod from India. This review covers the period December 1, 1999 through November 30, 2000.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand at (202) 482–3207; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2000).

Background

On January 8, 2002, the Department of Commerce (''the Department'') published the preliminary results of review of its administrative review of the antidumping duty order on stainless steel wire rod from India. See Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative Review, 67 FR 865 (January 8, 2002) (''Preliminary Results''). The final results of this administrative review are currently due no later than May 8, 2002.

Extension of Time Limit for Preliminary Results

Due to the complexity of issues present in this administrative review, such as complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the final results by 30 days, until no later than June 7, 2002.

Dated: May 8, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–12574 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–869]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of structural steel beams from the People's Republic of China. The period of investigation is October 1, 2000, through March 31, 2001.

Based on our analysis of the comments received from the respondent and the petitioners, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. Furthermore, we determine that structural steel beams from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson, Catherine Cartsos, or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (April 2001).

Case History

The preliminary determination in this investigation was issued on December 28, 2001. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from The People's Republic of China,* 66 FR 67197 (December 28, 2001) (*Preliminary Determination*).

On January 4, 2002, we issued a supplemental questionnaire to which respondent, Maanshan Iron and Steel Co., Ltd. (Maanshan), responded on January 8, 2002.

On January 7, 2002, the Department received from Maanshan a timely allegation of ministerial errors in the *Preliminary Determination.* Because we agreed with the respondent's ministerial-error allegations, we revised the margin calculations for the final determination to reflect the correction of these ministerial errors. See the *Ministerial Error Comments Decision Memorandum* dated January 24, 2002.

In January 2002, we conducted verification of the questionnaire responses of the sole respondent in this case, Maanshan.

On March 15, and 21, 2002, we received a case brief from the respondent and the petitioners (the Committee for Fair Beam Imports and its individual members), respectively. On March 20, 2002, the Department received a letter from the petitioners requesting that all or portions of the case brief submitted by the respondent be stricken from the record of the investigation because it contained new factual information. On March 22, 2002, in accordance with 19 CFR 351.301(b)(1) and (c)(1)(i), we sent a letter notifying the respondent that we were rejecting certain parts of the case brief because it contained untimely filed new factual information. See the letter from Laurie Parkhill dated March 22, 2002, rejecting certain parts of Maanshan's case brief. On March 25, 2002, the petitioners filed a rebuttal brief. On March 26, 2002, Maanshan submitted a rebuttal brief. On the same day it also submitted a revised case brief which redacted the new factual information.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless

otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in a concurrent structural steel beams investigation requested that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation. Our analysis has not changed since our preliminary determination.

Period of Investigation

The period of investigation is October 1, 2000, through March 31, 2001.

Analysis of Comments Received

All issues raised in the case briefs by the parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the *Decision Memorandum* which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on findings at verification and analysis of comments we received, we have made the adjustments described below to the margin calculations. See the *Decision Memorandum* for a discussion of these changes.

(1) We used the revised database files submitted by Manshaan on January 14, 2002, with the exception of revisions we made for the consumption usages of argon, nitrogen, and oxygen (see Comment 2 of the *Decision Memorandum*).

(2) We have used Bhoruka, an Indian manufacturer of industrial gases, to value oxygen, nitrogen, and argon for Maanshan instead of the United Nations Trade Commodity Statistics (UN Statistics). For the PRC-wide rate, we continue to use the UN Statistics.

(3) We recalculated labor expenses based on eight-hour workdays instead of six-and-a-half-hour workdays.

(4) We included the Steel Authority of India Limited (SAIL) as a surrogate company for valuing selling, general, and administrative costs, overhead costs, and profit; therefore, we calculated a simple average of the financial ratios based on data from SAIL and The Tata Iron and Steel Co. Ltd. (TATA).

(5) We have included commissions and other selling expenses in our calculated financial ratios for TATA since they are standard selling costs and properly categorized under SG&A in TATA's financial statements.

(6) With respect to surrogate values for material inputs, we have made the following changes: (a) We applied more recent data from the *United States Geological Survey 2000 Minerals Yearbook* to value slag, (b) we used the correct harmonized tariff number to value steel strap, and (c) we used a brokerage and handling cost based on bulk products instead of stainless steel products.

(7) We have excluded factor input prices from Korea, Thailand, and Indonesia when using the *Monthly Statistics of the Foreign Trade of India.* The Department has found that these countries maintain broadly available, non-industry-specific export subsidies. In prior decisions the Department found that the existence of these subsidies provide sufficient reason to believe or suspect that export prices from these countries are distorted. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 6482 (February 12, 2002), and accompanying *Issues and Decision Memorandum.*

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Separate Rates

In our preliminary determination, we found that the respondent had met the criteria for the application of a separate antidumping duty rate. For a more detailed discussion, see the Department's *Preliminary Determination.*

PRC-Wide Rate and Adverse Facts Available

For the reasons set forth in the *Preliminary Determination,* we continue to find that the use of adverse facts available for the calculation of the PRC-wide rate is appropriate. See the *Preliminary Determination* for further discussion of this topic. As adverse facts available we used price quotations for U.S. price which the petitioners obtained from a producer of the subject merchandise. We corroborated the petitioners' price quotations with data submitted by Maanshan in its questionnaire response. The price quotations fell within the range of export prices reported by Maanshan and are therefore reliable and relevant. For normal value we used the factors of production reported by Maanshan and applied the valuations which we used to calculate normal value for Maanshan, with the exception of the factor valuations which we used for argon, nitrogen, and oxygen. With respect to Maanshan, as explained in response to Comment 2 in the *Decision Memorandum,* we used values based on the prices charged by an Indian producer of the gases in question. These prices were substantially lower than the average values we derived for argon, nitrogen, and oxygen based on the UN Statistics data and which we used in the *Preliminary Determination.* As adverse facts available, to calculate the PRC-wide rate, we have continued to value argon, nitrogen, and oxygen using the UN Statistics data because these represent the highest values on record for these particular gases. We have used

the highest values for the gases in question as an adverse inference for situations where respondents do not cooperate to the best of their ability. Because this information is based on official data compiled by the United Nations we consider it to be corroborated. Using this data, we have calculated a PRC-wide rate of 89.17 percent.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the period October 1, 2000, through March 31, 2001:

Manufacturer/exporter	Margin (percent)
Maanshan	0.00
PRC-wide rate	89.17

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of structural steel beams from the PRC, except for subject merchandise produced and exported by Maanshan (which has no margin and is excluded from this determination), that are entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: May 13, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

[FR Doc. 02–12590 Filed 5–17–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–831]

Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Not Less Than Fair Value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at not less than fair value of structural steel beams from Italy. The period of investigation is April 1, 2000, through March 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margin is listed below in the section entitled ''*Final Determination Margin*.''

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR Part 351 (April 2001).

Final Determination:

We determine that structural steel beams from Italy are not being, nor are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on December 19, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Italy*, 66 FR 67185 (Dec. 28, 2001) (*Preliminary Determination*).

From January through March 2002, we conducted verification of the questionnaire responses of the sole respondent in this case, Duferdofin SpA (Duferdofin).

In April 2002, we received a case brief from the petitioners (the Committee for Fair Beam Imports and its individual members). We also received a rebuttal brief from Duferdofin.

The Department held a public hearing on April 24, 2002, at the request of the petitioners.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These

structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Period of Investigation

The period of investigation is April 1, 2000, through March 31, 2001, which corresponds to Duferdofin's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2001).

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting records, production records, and original source documents provided by the respondent.

Final Determination Margin

We determine that the following percentage weighted-average margin exists:

Manufacturer/exporter	Margin (percent)
Duferdofin SpA	0.33

Suspension of Liquidation

Because the estimated weighted-average dumping margin for the investigated company is 0.33 percent (*de minimis*), we are not directing the Customs Service to suspend liquidation of entries of structural steel beams from Italy.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: May 13, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

*Comment 1:*Classification of the Shape of Products Sold in the Home Market
*Comment 2:*Home Market Rebates
*Comment 3:*Home Market Discounts
*Comment 4:*Commission Expenses
*Comment 5:*Home Market Credit Expenses
*Comment 6:*Reclassification of U.S. Quality Codes
Comment 7: International Freight Costs
*Comment 8:*U.S. Credit Expenses
*Comment 9:*U.S. Dates of Payment for Unpaid Sales
*Comment 10:*Expenses Related to the Sale of Certain Assets in the United States
*Comment 11:*U.S. Indirect Selling Expenses

[FR Doc. 02–12591 Filed 5–17–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–811]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at not less than fair value of structural steel beams from Spain. The period of investigation is April 1, 2000, through March 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled ''*Final Determination Margins.*''

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR Part 351 (April 2001).

Final Determination:

We determine that structural steel beams from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on December 19, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Spain*, 66 FR 66207 (Dec. 28, 2001) (Preliminary Determination).

From January through March 2002, we conducted verification of the questionnaire responses of the sole respondent in this case, Aceralia Corporacion Siderurgica, S.A. (Aceralia).

In April 2002, we received case and rebuttal briefs from the petitioners (the Committee for Fair Beam Imports and its individual members) and Aceralia. The Department held a public hearing on April 16, 2002, at the request of the petitioners and Aceralia.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Period of Investigation

The period of investigation is April 1, 2000, through March 31, 2001, which corresponds to Aceralia's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2001).

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting records, production records, and original source documents provided by the respondent.

Final Determination Margins

We determine that the following percentage weighted-average margins exist:

Manufacturer/exporter	Margin (percent)
Aceralia Corporacion Siderurgica, S.A.	5.19
All Others	5.19

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, Aceralia.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of structural steel beams from Spain that are entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination. The Customs Service shall require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the

International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 75 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: May 13, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

Comment 1: Level of Trade in the Home Market
Comment 2: Level of Trade for U.S. Sales/CEP Offset
Comment 3: Arm's Length Test
Comment 4: Strength Codes
Comment 5: Billing Adjustments
Comment 6: Home Market Rebates
Comment 7: Home Market and U.S. Freight Expenses
Comment 8: Inland Freight Expenses of the Affiliated Resellers
Comment 9: Home Market Credit Expenses
Comment 10: U.S. Rebates
Comment 11: U.S. Brokerage and Handling Expenses
Comment 12: U.S. Indirect Selling Expenses of Arbed Americas
Comment 13: Interest Expenses Included in U.S. Indirect Selling Expenses
Comment 14: Clerical Errors in the Preliminary Determination
Comment 15: Calculation of the Overall Dumping Margin
Comment 16: Calculation of Raw Materials Costs
Comment 17: Exchange Gains and Losses
Comment 18: Acceptance of Revised Sales Databases

[FR Doc. 02–12592 Filed 5–17–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–838]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of structural steel beams from Taiwan. The period of investigation is April 1, 2000, through March 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled ''Final Determination Margins.''

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR Part 351 (April 2001).

Final Determination:

We determine that structural steel beams from Taiwan are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on December 19, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Taiwan*, 66 FR 67202 (December 28, 2001) (*Preliminary Determination*).

During the period January 19 - 30, 2002, we conducted verification of the questionnaire responses of Tung Ho Enterprise Corp. (Tung Ho), and Kuei Yi Industrial Co., Ltd. (Kuei Yi), the respondents in this case.

We received case and rebuttal briefs on April 18 and 24, 2002, respectively, from the petitioners (*i.e.*, the Committee for Fair Beam Imports and its individual members) and the respondents. On January 4, 11, and 28, 2002, Tung Ho, Kuei Yi, and the petitioners, respectively, requested a hearing. On April 15, 2002, Kuei Yi withdrew its request for a hearing. Both Tung Ho and the petitioners withdrew their requests on April 16, 2002.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I- sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation,

the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in several of the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Period of Investigation

The period of investigation is April 1, 2000, through March 31, 2001, which corresponds to the respondents' four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2001).

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated May 13, 2002, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Determination Margins

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Kuei Yi Industrial Co., Ltd.	15.32
Tung Ho Steel Enterprise Corp.	5.21
All Others	12.24

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margins found for the producers/exporters investigated in this proceeding, Kuei Yi and Tung Ho.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of structural steel beams from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after December 28, 2001, the publication date of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: May 13, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

Comments

*Comment 1:*Total Cost of Manufacturing Reconciliation
*Comment 2:*Scrap Offset
*Comment 3:*General and Administrative Expense Ratio
*Comment 4:*Home Market Payment Dates
*Comment 5:*Interest Expense
*Comment 6:*Correction to Interest Expense Ratio
Comment 7: Rental Expenses
*Comment 8:*Minor Correction to Rental Expenses
*Comment 9:*U.S. Imputed Credit Expenses
*Comment 10:*Correction of Clerical Error

[FR Doc. 02–12593 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–811]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published the preliminary determination of sales at less than fair value of structural steel beams from South Africa.. The period of investigation is April 1, 2000, through March 31, 2001.Based on our analysis of the comments received and certain findings from the verification, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination.We determine that structural steel beams from South Africa are being, or are likely to be, sold in the United States at less-than-fair-value prices as provided in section 735 of the Tariff Act of 1930, as amended. The estimated margins of sales at less than fair value are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 351 (April 2001).

Final Determination

We determine that structural steel beams (beams) from South Africa are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W''shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector, or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Case History

On June 20, 2001, the Department published a notice of initiation of the investigation of sales at LTFV of structural steel beams from South Africa (66 FR 33048). We published in the Federal Register the preliminary determination in this investigation on December 28, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from South Africa*, 66 FR 67213 (December 28, 2001) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred.

On January 7, through 11, 2002, the Department conducted verification of the home- market sales of Highveld Steel and Vanadium Corporation, Ltd. (Highveld), the sole respondent in this investigation. See Memorandum from J. David Dirstine and Dunyako Ahmadu to the File, dated January 29, 2002, Re: Home-Market Verification of Highveld Steel and Vanadium Corporation. On February 11, through 15, 2002, the Department conducted a cost-of-production (COP) and constructed-value (CV) data verification of Highveld. See Memorandum from Laurens van Houten and Heidi Norris to Neal Halper, Director, Office of Accounting, dated March 18, 2002, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Highveld Steel and Vanadium Corporation, Ltd. (*Cost Verification Memorandum*). On February 25, through 28, 2002, the Department conducted a U.S. sales data verification of Newco Steel Trading Co. (Newco), an affiliated U.S. reseller of merchandise produced by Highveld. See Memorandum from J. David Dirstine and Dunyako Ahmadu to the File, dated March 25, 2002, Re: United States Sales Verification of Highveld Steel and Vanadium Corporation.

On April 2, 2002, the petitioners, the Committee for the Fair Beam Imports and its individual members, and Highveld submitted their case briefs with respect to the verifications and the *Preliminary Determination*. On April 8, 2002, the petitioners and Highveld submitted rebuttal briefs with respect to the sales verifications and the *Preliminary Determination*. On April 9, 2002, we conducted a public hearing with a closed session with respect to the issues raised in the case briefs.

In a letter dated January 3, 2002, Highveld requested that the Department and Highveld enter into a suspension agreement pursuant 734(b) of the Act. The petitioners objected to Highveld's proposal in letters dated April 1, 2002, and February 14, 2002. After careful consideration and discussing the proposed agreement with the petitioners and Highveld, on April 15, 2002, the Department advised Highveld that it could not accept the proposed suspension agreement for various reasons.

Period of Investigation

The period of investigation (POI) is April 1, 2000, through March 31, 2001.

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in a decision memorandum which is hereby adopted by this notice. See the Structural Steel Beams from South Africa Issues and Decisions Memorandum dated May 13, 2002 (*Issues and Decision Memorandum*). A list of the issues which parties raised, and to which we have responded, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at www.ita.doc.gov/import__admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments we received, we have made adjustments to the calculation methodology in calculating the final dumping margins for Highveld in this proceeding. See Final Analysis Memorandum for Highveld dated May 13, 2001 (*Final Analysis Memorandum*). These revisions are as follows:

1. We adjusted COP and CV with a credit for vanadium slag using a by-product methodology in the calculation of the total cost of manufacture. See *Issues and Decision Memorandum* at Comment 4 and Memorandum to the File from Laurens van Houten, Senior Accountant, Office of Accounting, dated May 13, 2002, Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination (*Office of Accounting COP and CV Memorandum*).
2. We recalculated Highveld's reported fixed cost per ton. See *Issues and Decision Memorandum* at Comment 9 and *Office of Accounting COP and CV Memorandum*.
3. We revised the calculation of the general and administrative expense rate for Highveld based on information we obtained at the home-market Highveld verification. See *Issues and Decision Memorandum* at Comment 6 and *Office of Accounting COP and CV Memorandum*.
4. In accordance with the Department's long-standing practice, we recalculated Highveld's interest-expense ratio based on the net financing expenses and cost of sales from the audited fiscal-year financial statements of the highest level of consolidation which corresponds most closely to the POI, *i.e.*, on the December 31, 2000, audited financial statements of Highveld's parent, Anglo American PLC. See *Issues and Decision Memorandum* at Comment 7 and *Office of Accounting COP and CV Memorandum*.5. We eliminated equal angles and channels from both the home-market and U.S. sales databases as non-subject merchandise. See *Final Analysis Memorandum*.
6. Based on findings at verification at Highveld's offices in South Africa, we excluded certain sales reported incorrectly as export-price (EP) sales and included one EP sale that had been excluded incorrectly. See Highveld home-market sales verification report dated January 29, 2002 (*Highveld home-market sales verification report*).
7. Based on findings at the home-market verification, we used revised inventory carrying costs for this final determination. See *Highveld home-market sales verification report*.
8. Based on findings at the home-market verification, we used revised inland-freight expenses for certain EP sales. See *Highveld home-market sales verification report*.
9. Based on findings at the home-market verification we made a deduction from normal value for a per-ton levy paid to the South African Iron and Steel Institute applicable to home-market sales of structural beams. See *Highveld home-market sales verification report*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Highveld for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, as well as original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the ''Changes Since the Preliminary Determination'' section of this notice, above, and *Final Analysis Memorandum*.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from South Africa that are entered, or withdrawn from warehouses, for consumption on or after December 28, 2001, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension-of-liquidation instruction will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Highveld	5.17
All Others	5.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 13, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Affiliation

Comment 2: Indirect Selling Expenses

Comment 3: Understated Cost of Production (COP)

Comment 4: Byproduct Methodology v. Coproduct Methodology

Comment 5: Unallocated Costs

Comment 6: General and Administrative Expenses

Comment 7: Financial Expense Ratio

Comment 8: South African Iron and Steel Institute Domestic Sales Levy

Comment 9: Minor Errors Discovered at the Cost Verification

[FR Doc. 02–12594 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–810]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of structural steel beams from Luxembourg. Subsequently, we published an amended preliminary determination of sales at not less than fair value on January 31, 2002. The period of investigation is April 1, 2000, through March 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margin for the investigated company is listed below in the section entitled ''Final Determination Margins.''

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Margarita Panayi, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (April 2001).

Final Determination: We determine that structural steel beams from Luxembourg are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on December 19, 2001. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Luxembourg*, 66 FR 67223 (December 28, 2001) (*Preliminary Determination*). On January 31, 2002, we published an amended preliminary determination. *See Notice of Amended Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Luxembourg*, 67 FR 4701 (January 31, 2002).

In January, February and March, we conducted verifications of the questionnaire responses of the sole respondent in this case, ProfilARBED, S.A. (ProfilARBED).

In April 2002, we received case and rebuttal briefs from the petitioners (the Committee for Fair Beam Imports and its individual members) and ProfilARBED. The Department held a public hearing on April 19, 2002, at the request of the petitioners and ProfilARBED.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Period of Investigation

The period of investigation is April 1, 2000, through March 31, 2001, which corresponds to ProfilARBED's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2001).

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum, *ProfilARBED Final Determination Calculations*, Memorandum to the File dated May 13, 2002, and *Cost of Production and Constructed Value Calculation*

Adjustments for the Final Determination, Memorandum to Neal Halper from Heidi S. Norris dated May 13, 2002 (*Cost Calculation Memo*).

1. We used the revised third country and U.S. sales listings, submitted on April 17, 2002, which took into account revisions presented at the commencement of verifications and our verification findings, as discussed in the April 10, 2002, letter requesting the revised data bases.

2. We used the revised cost of production (COP) data base submitted on April 5, 2002, which included the corrections for the formula errors presented at the commencement of the COP verification.

3. We reclassified the shape variable (SHAPET/U) for ProfilARBED's sales of IPN beams, consistent with our determination in the companion structural steel beams from Italy investigation, and the classification of IPN beams by ProfilARBED's Spanish affiliate, Aceralia Corporacion Siderurgica (Aceralia), in the companion structural steel beams from Spain investigation.

4. We made corrections to ProfilARBED's April 17, 2002, third country sales listing to account for errors identified in the petitioners' April 26, 2002, letter and ProfilARBED's April 30, 2002, and May 1, 2002, letters.

5. For ProfilARBED's sales to affiliated resellers that were shipped directly to the customer, and where the price from ProfilARBED to the affiliate was not at arm's length, we applied the highest gross third country price reported for that product, less movement expenses, among the sales to unaffiliated customers and affiliated customers at arm's length.

6. We adjusted the cost of manufacture to reflect the higher of the transfer price, COP, or market price for electricity.

7. We adjusted the cost of manufacture to reflect the transfer price paid by ProfilARBED to their affiliates for the leases.

8. We revised the general and administrative (G&A) expense ratio to account for exchange rate gains and losses and to exclude sales commission offsets and a financial income offset.

9. We revised the financial expense rate, as described in the *Cost Calculation Memo.*

10. We revised the date of sale for U.S. sales to the date of shipment from the European port, except for U.S. warehouse sales, where we applied the earlier of invoice date or warehouse shipment date.

11. We applied the average ocean freight expense reported for west coast U.S. ports to all U.S. sales, except for those specific transactions where the reported expense was higher than this average, as facts available, because ProfilARBED failed to disclose properly that it used an affiliated supplier of ocean freight services.

12. We revised the U.S. imputed credit calculation to account for a revised U.S. interest rate, based on our verification findings, and the date of sale revision. In addition, we revised the inventory carrying expenses reported on U.S. sales shipped directly to the customer to account for the revised date of sale.

13. We revised the U.S. indirect selling expenses incurred in the United States to include a portion incurred by another U.S. affiliate.

14. We revised the offset to the interest expense component of U.S. indirect selling expenses to account for imputed credit expenses on a company-wide basis.

15. Except for sales shipped through the U.S. ports where we were able to verify the port-specific charges, we applied the highest U.S. port-specific per-unit brokerage and handling expense rate on the record of this investigation, to all U.S. sales incurring this expense.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Determination Margins

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
ProfilARBED, S.A	15.23
All Others	15.23

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, ProfilARBED.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of structural steel beams from Luxembourg that are entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination. The Customs Service shall require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 75 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: May 13, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

1. Third-Country Sales Data Base
2. Sales by Affiliated Resellers in Germany
3. Third-Country Sales Rebate Adjustments
4. Date of Sale for CEP Transactions
5. Ocean Freight Expenses Through Affiliate
6. Inclusion of U.S. Affiliate's Expenses in Calculation of U.S. Indirect Selling Expense
7. Interest Expenses Included in U.S. Indirect Selling Expenses
8. Price of Electricity from Affiliates
9. Price of Natural Gas from Affiliates

10. Valuation of Leases from Affiliates
11. Exchange Rate Gains and Losses in the G&A Calculation
12. Petitioners Ability to Comment Meaningfully
13. Calculation of the Overall Dumping Margin

[FR Doc. 02–12595 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–814]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of structural steel beams from the Russian Federation. On January 7 and 9, 2002, we received timely allegations of ministerial errors from the petitioner and the respondent. Because we agreed with the interested parties' ministerial-error allegations, we published on January 31, 2002, the amended preliminary antidumping duty determination of sales at less than fair value of structural steel means from the Russian Federation.

Based on our analysis of the comments received and certain findings from the verifications, we have made changes in the margin calculations. Therefore, the final determination differs from the amended preliminary determination.

We find that structural steel beams from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended. The estimated margin of sales at less than fair value are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR Part 351 (April 2001).

Final Determination

We determine that structural steel beams from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on December 28, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From the Russian Federation,* 66 FR 66217 (Dec. 28, 2001) (*Preliminary Determination*). On January 7 and 9, 2002, we received timely allegations of ministerial errors from the petitioner and the respondent. Because we agreed with the interested parties' ministerial-error allegations, we published the amended preliminary antidumping duty determination of sales at less than fair value of structural steel beams from the Russian Federation. See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From the Russian Federation,* 67 FR 4704 (January 31, 2002).

In March, we conducted verification of the questionnaires responses of the sole respondent in this case, Nizhny Tagil Iron and Steel Works (Tagil).

On April 15, 2002, we received a case brief from the petitioner (i.e., the Committee for Fair Beam Imports), and on April 17, 2002, the respondent submitted its rebuttal brief.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Period of Investigation

The period of investigation (POI) is October 1, 2000, through March 31, 2001.

Analysis of Comments Received

All issues raised in the case briefs by the petitioner to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public

memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments we received, we have made certain adjustments to the margin calculations. For a discussion of these changes, see the Decision Memorandum. These revisions are as follows:

1. In the *Preliminary Determination*, we used the 1997 financial statements of Eregli Demir ve Celik Fabrikalari TAS (Erdemir), a Turkish steel producer, to value overhead selling, general, and administrative (SG&A) expenses and profit ratios. For the final determination of this investigation, we have used the 2000 financial statement of Erdemir to value overhead SG&A expenses and profit ratios. For further details see analysis memorandum (analysis memorandum) dated May 10, 2002.

2. During our sales verification we found that Tagil had misreported its inventory carrying costs. Therefore, for the final determination of this investigation, we revised Tagil's inventory carrying costs. See the sales verification report dated March 22, 2002, at page 23. See also analysis memorandum.

3. During our sales verification we found that Tagil's factor for indirect selling expenses changed slightly. Therefore, for the final determination of this investigation, we have revised Tagil's factor for indirect selling expenses. See the sales verification report dated March 22, 2002, at page 22. See also analysis memorandum.

4. During our verification of Tagil's factors-of-production information we found that Tagil misreported its labor costs by basing its labor costs on a 7.5-hour workday instead of the eight hours for which the workers were actually paid. Therefore, for the final determination of this investigation, we revised Tagil's labor figures to capture total labor hours associated with the production of the subject merchandise. See the factors-of-production verification report dated April 5, 2002, at page 2. See also analysis memorandum.

5. During our factors-of-production verification we found that Tagil misreported the several distances from the supplier to Tagil's factory. Therefore, for the final determination of this investigation, we revised, where applicable, Tagil's reported distances from the supplier to the factory. See the factors-of-production verification report dated April 5, 2002, at page 2. See also analysis memorandum.

6. Because of numerous corrections which Tagil presented during the factors-of-production verification, we requested that it revise its factors-of-production database and submit a new factors-of-production database for the final determination.

7. For the final results of this investigation, we are using current information regarding South African imports of slag, dross, scalings and waste as reported in the Tradstat data service to value slag, waste, and vanadium. See the petitioner's February 6, 2002, submission at exhibit 3. See also analysis memorandum.

8. We determined to use the second alternative calculation of Tagil's short-term borrowing rate for the final results. See sales verification report dated March 22, 2002, at page 19, footnote 5. Consequently, we revised Tagil's credit expenses and inventory carrying costs to reflect the revised short-term borrowing rate. See analysis memorandum.

9. Upon review of our calculations for the *Preliminary Determination*, we found that the import statistics the respondent proposed and which we used to value lime/limestone vary from each other significantly. Therefore, we re-evaluated the use of these statistics and contacted a lime specialist with the U.S. Geological Survey. The lime specialist explained that the lime which is most likely used in the steel industry is categorized under HTS numbers 2522.10.0000, 2522.20.000, and 2522.30.000, not under HTS number 2521000 as proposed by the respondent. Therefore, based on this information, we have used import statistics for calendar year 2000 pertinent to HTS numbers under subcategory 2522 for the final determination. For further detail, see analysis memorandum.

10. For the final results of this investigation, we have accounted for the differences in calorific or energy potential and valued by-product gases according to their proper natural gas equivalents. For further details, see analysis memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents, provided by the respondent.

Russia-Wide Rate

In all non-market economy (NME) cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Tagil has qualified for a separate rate. Furthermore, the information on the record of this investigation indicates that Tagil is the only Russian producer and/or exporter of the subject merchandise with sales or shipments to the United States during the POI. Based upon our examination and clarification of U.S. Customs Service data, we have determined that there are no other Russian producers and/or exporters of the subject merchandise and consequently none which were required to respond to our questionnaire. Because the only known Russian producer of steel beams, Tagil, responded to our questionnaire and the evidence indicates that there are no other Russian producers or exporters of subject merchandise during the POI, we have calculated a Russia-wide rate for this investigation based on the weighted-average margin we determined for Tagil. This Russia-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Tagil.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of structural steel beams from the Russian Federation that are entered, or withdrawn from warehouse, for consumption on or after December 28, 2001, the publication date of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/exporter	Margin (percent)
Nizhny Tagil Iron and Steel Works	230.66
Russia-Wide Rate	230.66

In accordance with section 735(c)(5)(A) of the Act, we have based the Russia-wide rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, Tagil.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: May 13, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.,

Appendix—Issues in the Decision Memorandum

Comments

Comment 1: Valuation of By-Products
Comment 2: Sales of ''I'' Beams
Comment 3: Inventory Carrying Costs
Comment 4: Labor Costs

[FR Doc. 02–12597 Filed 5–17–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–805, A–451–804, A–823–814, A–821–818]

Initiation of Antidumping Investigations: Urea Ammonium Nitrate Solutions from Belarus, Lithuania, the Russian Federation, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor, Paige Rivas, John Conniff, or Crystal Crittenden, AD/CVD Enforcement Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114, (202) 482–0651, (202) 482–1009, or (202) 482–0989 respectively.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to 19 CFR part 351 (2001).

The Petitions

On April 19, 2002, the Department received petitions filed in proper form by the Nitrogen Solutions Fair Trade Committee (the petitioner). Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries, Inc.. The Department received information supplementing the petitions on May 3, 2002.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of urea ammonium nitrate solutions (UANS) from Belarus, Lithuania, the Russian Federation, and Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petitions* section below.

Scope of Investigations

For purposes of these investigations, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3102.80.00.00. Although the HTSUS subheading is provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner and commodity specialists at U.S. Customs to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU) at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Period of Investigations

Section 351.204(b) of the Department's regulations states that, in the case of a non market economy (NME) country, in an investigation, the Department normally will examine merchandise sold during the two most recently completed fiscal quarters as of the month preceding the month in which the petitions were filed. The regulations further state that the Department may examine merchandise sold during any additional or alternate period it concludes is appropriate.

Following the above noted guidelines from section 351.204(b) of the Department's regulations, the

anticipated period of investigation (POI) for each of these investigations is October 1, 2001, through March 31, 2002.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations.

The domestic like product referred to in these petitions is the domestic like product defined in the *Scope of Investigations* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

The Department has further determined that these petitions contain adequate evidence of industry support. Information contained in the petitions demonstrates that the domestic producers or workers who support the petitions account for over 50 percent of total production of the domestic like product. *See Petitions for Imposition of Antidumping Duties: Urea Ammonium Nitrate Solutions from Ukraine, Lithuania, Belarus, and the Russian Federation*, dated April 19, 2002, at Exhibit 9. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. *See Initiation Checklists* (public version on file in the CRU of the Department, Room B–099). Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklists*. Thus, the requirements of section 732(c)(4)(A)(ii) are met.

Accordingly, the Department determines that these petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklists* at Industry Support.

Export Price and Normal Value

The following are descriptions of the allegations of sales at LTFV upon which our decisions to initiate these investigations are based. Based on the information submitted in the petitions, adjusted where appropriate, we are initiating these investigations, as discussed below and in the *Initiation Checklists*.

The Department has analyzed the information in the petitions and considers the country-wide import statistics for the anticipated POI and market information used to calculate the estimated margins for the subject countries to be sufficient for purposes of initiation. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Non Market Economies

Regarding an investigation involving an NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. , 66 FR 33525 (June 22, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Ammonium Nitrate from Ukraine*, 66 FR 38632 (July 25, 2001).

Belarus

Export Price

The petitioner based export price (EP) on import weighted average unit value (AUV) data from official U.S. Census Bureau statistics for the period October 2001 through February 2002, for the subject HTSUS number. The petitioner calculated a net U.S. price by deducting foreign inland freight and brokerage and handling from the AUV data.

The petitioner based foreign inland freight on a price quote for the rail transport effective during calender year 2000, obtained from a South African rail company provider and adjusted for inflation using the South African Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 21319, 21324 (April 30, 2001) (*Preliminary LTFV Determination: Pure Magnesium from the Russian Federation*). Foreign brokerage and handling charges were based on the ''waterfront charges'' for the port of Durban, as published in a report by the South African Department of Transportation.

Normal Value

The petitioner asserted that the Department has long treated Belarus as an NME country. Pursuant to section 771(18)(C)(i) of the Act, because Belarus's status as an NME remains in effect, the petitioner determined the dumping margin using a factors of production (FOP) analysis.

For normal value (NV), the petitioner based the FOP, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. UANS producer. The petitioner asserted that information regarding consumption rates for the production of this product in Belarus is not reasonably available, and has therefore assumed, for purposes of the petition, that the producer in Belarus used the same inputs in the same quantities as the petitioner. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioner asserted that South Africa is the most appropriate surrogate country for Belarus, claiming that South Africa is: (1) a significant producer of comparable merchandise, and (2) is at a level of development comparable to Belarus in terms of per capita gross national income (GNI), which is the current World Bank term for what was previously termed ''Gross National Product'' (GNP). The petitioner notes that the Department's regulations state that it will place primary emphasis on per capita GNP in determining whether a given market economy is at a level of economic development comparable to the NME country. *See e.g. Cold-Rolled Carbon Steel Flat Products from the Russian Federation: Non-Market Economy Status and Surrogate Country Selection*, Memorandum from Jeffery May to Jim Doyle, February 28, 2002 (*Cold-Rolled Surrogate Country Selection Memo*). The petitioner further notes that South Africa has been included on the Department's most recent list of potential surrogates for Belarus. *See Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from Belarus: Non-market Economy Status and Surrogate Country Selection*, Memorandum from Jeff May to Tom Futtner (August 31, 2000). Furthermore, the petitioner has been able to obtain all of the necessary data to value factors of UANS production in South Africa. Based on the information provided by the petitioner, we believe that the petitioner's use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate data from South Africa. Materials were valued based on South African import values, as published by *Statistics of the South African Department of Minerals & Energy (DME Statistics*), and *Global Trade Information Services: World Trade Atlas (GTI Services*), sourced from the South Africa Revenue Service.

Labor was valued using the Department's regression-based wage rate for Belarus, in accordance with 19 CFR 351.408(c)(3).

Natural gas was valued using *DME Statistics* for October through December 2001. Electricity was valued using *DME Statistics* for the calender year 2000. Petitioners assert that the same figures were recently relied upon by the Department in pure magnesium from the Russian Federation. *See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001) (*Pure Magnesium from the Russian Federation*).

Catalysts and the corrosion inhibitor were valued using AUVs of imports into South Africa taken from *GTI Services*. For manufacturing overhead, depreciation, general expenses and profit, the petitioner relied upon publicly available financial data from a South African producer of nitrogen fertilizers, Omnia Holdings, covering the period January 2000 through March 2001. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation. *See Initiation Checklist*.

Lithuania

Export Price

The petitioner based EP on the import weighted AUV data from official U.S. Census Bureau statistics for the period October 2001 through February 2002 for the subject HTSUS number. The petitioner calculated a net U.S. price by deducting brokerage, handling and domestic inland freight from the AUV. The petitioner based foreign inland freight on a price quote for the rail transport effective during calendar year 2000, obtained from a South African rail company provider and adjusted for inflation using the South African Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund. *See Preliminary LTFV Determination: Pure Magnesium From the Russian Federation*. Foreign brokerage and handling charges were based on the ''waterfront charges'' for the port of Durban, as published in a report by the South African Department of Transportation.

Normal Value

The petitioner asserted that Lithuania is an NME country and no determination to the contrary has yet been made by the Department. The petitioner claimed that, pursuant to 19 USC 1677(18)(C)(i), Lithuania presumptively remains an NME country until that status is revoked.

For NV, the petitioner based the FOP, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. UANS producer. The petitioner asserted that information regarding the Lithuanian producer's consumption rates is not reasonably available, and has therefore assumed, for purposes of the petition, that the producer in Lithuania uses the same inputs in the same quantities as the petitioner uses. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioner asserted that South Africa is the most appropriate surrogate country for Lithuania, claiming that South Africa is: (1) a significant producer of comparable merchandise; (2) at a level of economic development comparable to Lithuania in terms of per capita GNI; and (3) that 30 percent of South Africa's labor force is employed in the agricultural sector, which corresponds to Lithuania's rate of 20 percent. The petitioner notes that the Department's regulations state that it will place primary emphasis on per capita GNP in determining whether a given market economy is at a level of economic development comparable to the NME country. *See Cold-Rolled Surrogate Country Selection Memo*. Furthermore, the petitioner has been able to obtain all of the necessary data to value factors of UANS production in South Africa. Based on the information provided by the petitioner, we believe that the petitioner's use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate data from South Africa.

Materials were valued based on South African import values, as published by *DME Statistics* and *GTI Services*.

Labor was valued using the Department's regression-based wage rate for Lithuania, in accordance with 19 CFR 351.408(c)(3).

Natural gas was valued using *DME Statistics* for October to December 2001. Electricity was valued using *DME Statistics* for the calender year 2000. Petitioners assert that the same figures were recently relied upon by the Department in pure magnesium from the Russian Federation. *See Pure Magnesium From the Russian Federation*.

Catalysts, chemicals, and the corrosion inhibitor were valued using AUVs of imports into South Africa taken from *GTI Services* for July to December 2001. For manufacturing overhead, depreciation, general expenses and profit, the petitioner has relied upon publicly available financial data from a South African producer of nitrogen fertilizers, Omnia Holdings, covering the period January 2000 through March 2001. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation. *See Initiation Checklist*.

The Russian Federation

Export Price

The petitioner based EP on import weighted AUV data from official U.S. Census Bureau statistics for the period October 2001 through February 2002 for the subject HTSUS number. The petitioner calculated a net U.S. price by deducting brokerage, handling and domestic inland freight from the AUV. The petitioner based foreign inland freight on a price quote for the rail transport effective during calender year 2000, obtained from a South African rail company provider and adjusted for inflation using the South African WPI as published in the *International Financial Statistics* of the International Monetary Fund. *See Preliminary LTFV Determination: Pure Magnesium From the Russian Federation*. Foreign brokerage and handling charges were based on the ''waterfront charges'' for the port of Durban, as published in a report by the South African Department of Transportation.

Normal Value

The petitioner asserted that the Department has treated the Russian Federation as an NME country in the past and has issued no determinations to the contrary. Pursuant to19 CFR 351.202(b)(7)(i)(C) of the Department's regulations, because the Russian Federation's status as an NME remains in effect, the petitioner determined the dumping margin using a FOP analysis.

For NV, the petitioner based the FOP, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. UANS producer. The petitioner asserted that information regarding the Russian producers' consumption rates is not reasonably available, and it has therefore assumed, for purposes of the petition, that producers in Russia use the same inputs in the same quantities as the petitioner used. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioner asserted that South Africa is the most appropriate surrogate country for the Russian Federation, claiming that South Africa is: (1) a significant producer of comparable merchandise; and (2) at a level of economic development comparable to the Russian Federation in terms of per capita GNI. The petitioner further notes that in recent antidumping cases involving the Russian Federation, the Department identified a group of countries at a level of economic development comparable to the Russian Federation based primarily on per capita GNI. This group includes Colombia, Egypt, the Philippines, Thailand, and Tunisia. The petitioner claimed that none of these potential surrogates were suitable for the instant petition for the following reasons: 1) the petitioner stated that surrogate country producer information is not available for Colombia; 2) in the case of Egypt, the petitioner asserted that it is unable to locate reliable, countrywide natural gas pricing data; 3) for the Philippines and Thailand, the petitioner stated that there is no nitrogen fertilizer production in those two countries; and 4) in the case of Tunisia, the petitioner asserted that it was unable to locate any sources of nationwide natural gas or electricity prices, in addition to being unable to obtain financial data for the one nitrogen producer in Tunisia. The petitioner claims it has been able to obtain all of the necessary data to value factors of UANS production in South Africa.

Based on the information provided by the petitioner, we believe that the petitioner's use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate data from South Africa. Materials were valued based on South African import values, as published by DME Statistics and GTI Services.

Labor was valued using the Department's regression-based wage rate for the Russian Federation, in accordance with 19 CFR 351.408(c)(3).

Natural gas was valued using *DME Statistics* for October through December 2001. Electricity was valued using *DME Statistics* for the calender year 2000. The petitioner asserted that the same figures were recently relied upon by the Department in pure magnesium from the Russian Federation. *See Pure Magnesium From the Russian Federation*. These figures were adjusted to account for known price differences between U.S. production factors and factors reported to the Department by a Russian Federation producer in the production of ammonium nitrate (AN), and publicly reported factors for AN provided in the AN antidumping investigations. *See Initiation of Antidumping Investigation: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 64 FR 45226 (September 27, 2000) (*Initiation of Ammonium Nitrate*). The petitioner assumed that the proprietary factor data was ranged upward by the full 10 percent maximum adjustment percentage. Therefore, to be conservative, the petitioner reduced the publicly reported factors by 10 percent to account for the possibility for an upward adjustment.

Catalysts, chemicals, and the corrosion inhibitor were valued using AUVs of imports into South Africa taken from *GTI Services* for July through December 2001. For manufacturing overhead, depreciation, general expenses and profit, the petitioner relied upon publicly available financial data from a South African producer of nitrogen fertilizers, Omnia Holdings, covering the period January 2000 through March 2001. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation. *See Initiation Checklist*.

Ukraine

Export Price

The petitioner based EP on the AUV data from official U.S. Census Bureau statistics for the period October 2001 through February 2002 for the subject HTSUS number. The petitioner

calculated a net U.S. price by deducting brokerage, handling and domestic inland freight from the AUV. The petitioner based foreign inland freight on rail freight information provided by the U.S. Embassy in Jakarta, Indonesia for February 2001 and adjusted for inflation using the Indonesian WPI as published in the *International Financial Statistics* of the International Monetary Fund. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine*, 66 FR 13286 (March 5, 2001) (Ammonium Nitrate from Ukraine). Foreign brokerage and handling charges were based on Indonesian brokerage and handling cost for February 2001 used by the Department in the antidumping investigation of AN from Ukraine and were inflated to the POI using the Indonesian WPI as published in the *International Financial Statistics* of the International Monetary Fund. *See Ammonium Nitrate from Ukraine*, 66 FR at 13290–91.

Normal Value

The petitioner asserted that the Department has treated Ukraine as an NME country in the past and has issued no determinations to the contrary. Pursuant to19 CFR 351.202(b)(7)(i)(C), because Ukraine's status as an NME remains in effect, the petitioner determined the dumping margin using a FOP analysis.

For NV, the petitioner based the FOP, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. UANS producer. The petitioner asserted that information regarding the Ukrainian producers' consumption rates is not reasonably available, and it has therefore assumed, for purposes of the petition, that producers in Ukraine use the same inputs in the same quantities as the petitioner uses. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioner asserted that Indonesia is the most appropriate surrogate country for Ukraine, claiming that Indonesia is: (1) a significant producer of comparable merchandise; and (2) at a level of economic development comparable to Ukraine in terms of per capita GNI. The petitioner further notes that Indonesia, in addition to Pakistan, Sri Lanka, the Philippines, and Egypt, is included on the Department's most recent list of possible surrogate countries for Ukraine. *See Ammonium Nitrate from Ukraine*. Based on the information provided by the petitioner, we believe that the petitioner's use of Indonesia as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, petitioner valued FOP, where possible, on reasonably available, public surrogate data from Indonesia.

Labor was valued using the Department's regression-based wage rate for Ukraine, in accordance with 19 CFR 351.408(c)(3).

Natural gas and electricity were valued from the Organization for Economic Cooperation and Development's *Energy Prices & Taxes* (4th quarter 2001) and adjusted to the anticipated POI to take inflation into account. Adjustments were also made to account for known price differences between U.S. production factors and factors reported to the Department by Ukrainian producer, J.S.C. Stirol, for the production of AN, and publicly reported factors for AN provided in the AN antidumping investigations. *See Ammonium Nitrate from Ukraine*. The petitioner assumed that the proprietary factor data was ranged upward by the full 10 percent maximum adjustment percentage. Therefore, to be conservative, the petitioner reduced the publicly reported factors by 10 percent to account for the possibility for an upward adjustment.

For manufacturing overhead, depreciation, general expenses and profit, the petitioner has relied upon publicly available financial data from an Indonesian producer of ammonia and urea, PT Pupuk Kalimantan.

Catalysts, chemicals and the corrosion inhibitor were valued using import data from Indonesia taken from *GTI Services* for July to December 2001. The petitioner used Indonesian import statistics for HTSUS number 3815.1100 to value the catalysts containing nickel and, in accordance with 19 CFR 351.408(a), subtracted NME values from the total quantity and value of imports. The Indonesian import statistics also contained values listed as being imports from Indonesia. Because we do not know what these values represent, we adjusted the petitioner's surrogate value data by subtracting these values from the Indonesian import statistics. Furthermore, it is the Department's practice to disregard import values from South Korea, Thailand, and Indonesia. The Department has determined that each of these countries maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. Therefore, we have also adjusted the petitioner's surrogate data by subtracting these imports from these countries from the statistics. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). Based on the information provided by the petitioner and taking into account adjustments made by the Department, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation.

Fair Value Comparisons

Based on a comparison of EP to NV, the petitioner calculated estimated weighted-average dumping margins of 75.80, 103.90, and 331.40 percent for Belarus, Lithuania, and the Russian Federation, respectively. In the case of Ukraine, the Department adjusted the petitioner's calculations, which then produced an estimated weighted-average dumping margin of 144.70 percent. Summaries of the margin calculations are contained in the *Initiation Checklists*.

Based on the data provided by the petitioner, there is reason to believe that imports of UANS from Belarus, Lithuania, the Russian Federation, and Ukraine are being, or are likely to be, sold at LTFV.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, ITC data, information gathered during the AN investigations, lost sales data, and pricing information. *See Ammonium Nitrate From Ukraine. See also Ammonium Nitrate from Russia*. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklists* at 4 and 5.

Request for an Expedited Preliminary Determinations

The petitioner has requested that, in accordance with the Department's June 8, 2000, policy bulletin regarding expedited antidumping duty investigations, the Department issue

expedited preliminary determinations in these investigations. *See* Department Policy Bulletin No. 00.1, ''Expedited Antidumping Duty Allegations'' (policy bulletin), which can be found on the Department's web page at http://ia.ita.doc.gov. The policy bulletin lays out specific criteria that the Department will consider in deciding whether to expedite an investigation, including evidence of an extraordinary surge in imports prior to the filing of the petition, evidence of significant import penetration, evidence of an unusually high dumping margin or recent declines in import prices, whether there are prior determinations of dumping against the same product (or class of product) from the subject country in the United States or in other countries, and whether the Department's resources permit it to expedite the preliminary determination.

The petitioner contended that there has been a surge of ''unfairly traded imports'' of UANS from Belarus, Lithuania, the Russian Federation, and Ukraine at ''unprecedented levels'' and that subject country producers have captured U.S. market share through ''aggressive and persistent underselling.'' The petitioner also alleged that the United States market has been and continues to be flooded with UANS traded at LTFV from the Russian Federation, Ukraine, Lithuania, and Belarus. Furthermore, the petitioner asserted that after the imposition of antidumping restrictions in the European Union in 2000, the United States, the largest unrestricted market for UANS, has become a target for unfairly traded imports of UANS. Moreover, the petitioner argued that the massive surge of imports from the Russian Federation, Ukraine, Lithuania, and Belarus did not recede in 2001, but instead comprised 84.1 percent of the total share of UANS imports. The petitioner claimed the rapid and voluminous increase of imports from the Russian Federation, Ukraine, Lithuania, and Belarus warrants an expedited preliminary determination.

The Department is considering the petitioner's arguments on this matter and will make a determination on whether to expedite the preliminary determination. Section 351.205(b)(1) of the Department's regulations states that the deadline for a preliminary determination in an antidumping investigation is normally not later than 140 days after the date on which the Secretary initiated the investigation.

We are inviting parties to comment on the petitioner's request for expedited preliminary determination. The Department encourages all parties to submit such comments no later than May 20, 2002. Comments should be addressed to the Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Antidumping Investigations

Based on our examination of the petitions, we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of UANS from Belarus, Lithuania, the Russian Federation, and Ukraine are being, or are likely to be, sold in the United States at LTFV. Should the need arise to use any of this information as facts available under Section 776 of the Act in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to representatives of the government of Belarus, Lithuania, Ukraine, and the Russian Federation.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by June 3, 2002, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of UANS from Belarus, Lithuania, Ukraine, and the Russian Federation. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued an published in accordance with section 777(i) of the Act.

DATED: May 9, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–12588 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–1069–06]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration, Commerce.

ACTION: Correction of notice of funding availability.

On page 31781 in the issue of Friday, May 10, 2002, in the second column, ''June 10, 2002'' should read ''July 1, 2002''. With this change, the affected sentence reads as follows: ''From May 10, 2002, until July 1, 2002, the Department does not counsel potential applicants regarding the merits of projects they may propose in their applications.''

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3215, Washington, DC 20230.

E-mail: *Brad_Hess@ita.doc.gov.*

Phone/Fax: (202) 482–2969/–4462.

Internet: *http://www.export.gov/mdcp.*

Dated: May 14, 2002.

Robert W. Pearson,

Director, Office of Planning, Coordination and Management, Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 02–12528 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–831]

Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On December 28, 2001, the Department of Commerce published the preliminary determination of sales at less than fair value of structural steel beams from Germany. The period of investigation is April 1, 2000, through March 31, 2001.

Based on our analysis of the comments received and certain findings

from the verification, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination.

We find that structural steel beams from Germany are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended. The estimated margins of sales at less than fair value are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (2001).

Final Determination

We determine that structural steel beams (beams) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Final Margin'' section of this notice.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W''shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, interested parties in this and the concurrent structural steel beams investigations requested that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles. We preliminarily found that both products fell within the scope of this investigation. Because we have received no further scope comments in this proceeding, we are making a final determination that these products fall within the scope of this investigation.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on December 28, 2001. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Germany,* 66 FR 67190 (December 28, 2001) (Preliminary Determination). Since the publication of the *Preliminary Determination,* the following events have occurred.

On January 2, 2002, Stahlwerk Thüringen GmbH (SWT), a respondent in this investigation, requested that the Department correct a ministerial error it found in the Department's margin calculations. On January 7, 2002, the Committee for Fair Beam Imports and its individual members, Northwestern Steel and Wire Company, Nucor Corporation, Nucor-Yamato Steel Company, and TXI-Chaparral Steel Company (the petitioners), requested that the Department correct ministerial errors they found in the Department's margin calculation for SWT. On January 31, 2002, the Department determined that the ministerial error alleged by SWT was a significant ministerial error within the meaning of 19 CFR 351.224(g)(1) but that the errors alleged by the petitioners were not ministerial errors. Accordingly, we corrected the error identified by SWT. We published in the **Federal Register** our amended preliminary determination in this investigation on January 31, 2002. See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 4703 (January 31, 2002).

On January 21 through 25, 2002, the Department conducted verifications of three of SWT's affiliated resellers in Germany to examine SWT's claim that it could not report downstream sales by its affiliated resellers. See *Sales Verifications of Affiliated Resellers,* Memorandum to the File dated March 1, 2002. On January 28 through 31, 2002, the Department conducted a verification of SWT's cost-of-production (COP) and constructed-value (CV). See SWT COP and CV verification report dated March 20, 2002. On January 28 through February 5, 2002, the Department conducted a home-market sales data verification of SWT. See SWT home-market sales verification report dated April 2, 2002. On March 11 through 15, 2002, the Department conducted a U.S. sales data verification of TradeARBED Corporation (TANY), an affiliated U.S. reseller of merchandise produced by SWT. See TANY U.S. sales verification report dated March 28, 2002.

On April 11, 2002, the petitioners and SWT submitted their case briefs with respect to the verifications and the *Preliminary Determination.* On April 17, 2002, the petitioners and SWT submitted rebuttal briefs. On April 19, 2002, we conducted a public hearing with a closed session with respect to the issues raised in the parties' case briefs.

Period of Investigation

The period of investigation (POI) is April 1, 2000, through March 31, 2001.

Use of Facts Available

In the *Preliminary Determination,* we determined that the application of total adverse facts available was appropriate with respect to Salzgitter AG (Salzgitter), as this entity failed to respond to our antidumping questionnaire. As adverse facts available, we applied a margin rate of 35.75 percent, the highest margin

alleged in the petition (which we were able to corroborate). See the Decision Memorandum for Salzgitter AG for the Preliminary Results of the Less-Than-Fair-Value Investigation of Structural Steel Beams from Germany for the Period of Investigation April 1, 2000, through March 31, 2001, dated December 19, 2001. The interested parties did not object to the use of AFA for Salzgitter, or to our choice of facts available, and no new facts were submitted since the *Preliminary Determination* which would cause us to reconsider whether the information relied upon in the petition has probative value. Therefore, for the reasons set out in the *Preliminary Determination,* we have continued to use 35.75 percent as adverse facts available for the purposes of this final determination.

We used facts available for SWT's international freight expenses. As facts available, we used the average ocean-freight expense SWT reported for west-coast ports for all U.S. sales transactions except for those specific transactions where the reported ocean-freight expense was higher than this average. For a complete discussion of why we used facts available for these sales and the selection of facts available, see comment 1 of the Structural Steel Beams from Germany Issues and Decisions Memorandum dated May 13, 2002 (Decision Memorandum), available in B–099 of the Central Records Room at the Department of Commerce and the web at *http://ia.ita.doc.gov/frn/index.html.*

Finally, we used adverse facts available for SWT's U.S. brokerage and handling expenses. We did this because, when we asked at verification for the documents to support the reported expense for ports other than the two we examined, TANY informed us that it was not prepared to provide these invoices, claiming that they were ''not available.'' See the TANY verification report at page 11. Therefore, because TANY was unprepared to provide the documents in question at verification, although it was given adequate notice that these documents would be reviewed,[1] we find that it did not act to the best of its ability in reporting its brokerage and handling expenses related to certain U.S. ports. Accordingly, we have based the amount of brokerage and handling expenses for these ports on adverse facts available. As adverse facts available, we have used SWT's highest per-port amount on the record of this proceeding. For a further discussion of this issue, see comment 11 of the Structural Steel Beams from Spain Issues and Decisions Memorandum dated May 13, 2002. However, because TANY was able to provide adequate documentation for two of the ports in question, we have accepted the expenses calculated for those ports for purposes of the final determination.

[1] See the February 27, 2002, verification outline for TANY at page 10.

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in a decision memorandum, which is hereby adopted by this notice. See the Decision Memorandum. A list of the issues which parties raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. As indicated above, parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by SWT for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records as well as original source documents provided by the respondents.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margins for SWT in this investigation. See Final Analysis Memoranda for SWT dated May 13, 2001. These revisions are as follows:

1. We used the cost-of-production (COP) database that SWT submitted on January 14, 2002, the home-market sales database that it submitted on February 21, 2002, and the U.S. sales database that it submitted on April 16, 2002.

2. We used the reported date of shipment as the date of sale for U.S. sales. We also revised SWT's reported credit expense and inventory carrying costs accordingly, using the short-term borrowing rate we verified. See the TradeARBED Corporation (TANY) U.S. sales verification report dated March 28, 2002, at page 12.

3. We revised SWT's reported billing adjustments to include two claims that we found, at verification, that TANY did not account for in its reported billing adjustments.

4. We revised SWT's U.S. indirect selling expenses to allocate a portion of Arbed Americas Atlantic, Inc.'s selling expenses to TANY rather than use the rate we calculated for ARBED Americas, Inc. In addition, we did not include any of TANY's or Arbed Americas Atlantic, Inc.'s interest expenses in our calculation of TANY's indirect selling expense because the imputed credit which we calculated exceeded the amount of interest expense attributable to TANY's sales of SWT beams. See the SWT final results calculation memorandum dated May 13, 2002, at attachment 2 for our calculation of indirect selling expenses.

5. We replaced the warranty expense SWT reported in its February 21, 2002, home-market sales database with the verified transaction-specific warranty expense we verified in SWT's home-market sales database which it submitted on January 14, 2002. Because SWT did not provide observation numbers, we identified the specific transactions for which the warranty expenses were reported by invoice, product code, and quantity.

6. As partial facts available, we used the average ocean-freight expense SWT reported for Los Angeles, San Francisco/Oakland, and Portland for all U.S. sales transactions except for those specific transactions where the reported ocean-freight expense was higher than this average.

7. As adverse facts available, we used the highest per-port amount for U.S. brokerage and handling expenses on the record of this proceeding for all U.S. transactions except for sales through two ports.

8. We revised the financial-expense rate to include other financial charges and bond expenses and to exclude long-term interest income offsets from the numerator. We also revised the denominator in the calculation to reflect cost of goods sold rather than raw materials.

9. We subtracted home-market billing adjustments from home-market price instead of adding them to home-market price.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, for SWT, we are directing the Customs Service to suspend liquidation of all entries of subject merchandise from Germany that are entered, or withdrawn from

warehouses, for consumption on or after the date of publication of the final determination in the **Federal Register**. For all other companies, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Germany that are entered, or withdrawn from warehouses, for consumption on or after December 28, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension-of-liquidation instruction will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
SWT	8.09
Salzgitter	35.75
All Others**	8.09

** Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero (or *de mimimis*) or determined entirely on facts available. Because we determined Salzgitter's margin entirely on facts available, we used SWT's margin as the all-others rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 13, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

I. Changes From the Preliminary Determination
II. Company-Specific Issues
Comment 1: Ocean Freight Expenses Through An Affiliate
Comment 2: Date of Sale for Constructed-Export-Price Transactions
Comment 3: Sales by Affiliated Resellers in Germany
Comment 4: Home-Market Inland Freight
Comment 5: Home-Market Quantity Rebates
Comment 6: Home-Market Warranties
Comment 7: Home-Market Other Rebates
Comment 8: U.S. Billing Adjustments
Comment 9: U.S. Indirect Selling Expenses
Comment 10: Interest Expense
Comment 11: Clerical-Error Allegation
Comment 12: Calculation of Weighted-Average Dumping Margin

[FR Doc. 02–12596 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102E]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Public Meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold meetings.

DATES: The meetings will be held on June 12–13, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Windward Passage Holiday Inn, in Veterans Drive, Charlotte Amalie, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will convene on Wednesday, June 12, 2002, from 8:30 a.m. to 3 p.m., and on Thursday, June 13, 2002, from 9 a.m. to 12 noon, approximately. A scoping meeting period for Sustainable Fishery Act (SFA) Comprehensive Amendment will be open from 1 p.m. to 3 p.m., on June 12, 2002, to allow the general public and interested persons to provide their comments.

The Council will hold its 108th regular public meeting to discuss the items contained in the following agenda:

June 12, 2002, 8:30 a.m.—10 a.m.

Closed Session

10 a.m.—12 noon

Call to Order
Adoption of Agenda
Consideration of 106th Council Meeting Verbatim Minutes
SFA Comprehensive Amendment Presentation—Southeast Regional Office/NMFS

12 noon—1 p.m.

Lunch

1 p.m.—3 p.m.

Scoping meeting on SFA Comprehensive Amendment

June 13, 2002, 9 a.m.—12 noon

Reef Fish Fishery Management Plan
SFA Next Steps
Other Business

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12603 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051002D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet Monday, June 10, 2002 from 10 a.m. until 5 p.m.; Tuesday, June 11, 2002 from 8 a.m. until 5 p.m.; and Wednesday, June 12, 2002 from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92037; (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to continue revising the draft fishery management plan (FMP) for West Coast highly migratory species (HMS) fisheries per Council guidance from the March 2002 Council meeting. Initial preparation of the HMSPDT report for the June 2002 Council meeting will also occur. The HMS FMP is scheduled for final Council action in November 2002.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12604 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051002C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Marine Reserves Subcommittee of the Scientific and Statistical Committee (SSC) will hold a meeting which is open to the public.

DATES: The Marine Reserves Subcommittee of the SSC will meet Monday, June 10, 2002, at 8:30 a.m. and Tuesday, June 11, 2002, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council office, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gilden, Associate Staff Officer, Information Communications, Pacific Fishery Management Council, (503) 326–6352 before May 15, 2002 or (866) 806–7204 after May 15, 2002.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the California Environmental Quality Act analysis on the creation of marine reserves in state waters of the Channel Islands National Marine Sanctuary.

Although non-emergency issues not contained in the Marine Reserves Subcommittee of the SSC meeting agenda may come before the Subcommittee for discussion, those issues may not be the subject of formal Marine Reserves Subcommittee of the SSC action during this meeting. Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Subcommittee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 (or (866) 806–7204 after May 15) at least 5 days prior to the meeting date.

Dated: May 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12605 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020322065–2065–01]

Notice of Applicability of Special Use Permit Requirements to Certain Categories of Activities Conducted Within the National Marine Sanctuary System

AGENCY: Marine Sanctuaries Division, National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for public comments.

SUMMARY: In accordance with a requirement of Pub. L. 106–513, NOAA hereby gives public notice of the applicability of the special use permit requirements of Section 310 of the National Marine Sanctuaries Act to certain categories of activities conducted within the National Marine Sanctuary System. In addition, NOAA is seeking public comment on the subject of special use permits.

DATES: Comments must be received on or before July 19, 2002.

ADDRESSES: Submit all written comments to Helen Golde, National Marine Sanctuary Program, 1305 East West Highway (N/ORM6), 11th floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Helen Golde, National Marine Sanctuary Program, 1305 East West Highway (N/ORM6), Silver Spring, MD 20910, telephone (301) 713–3125, extension 152, email *Helen.Golde@noaa.gov*; or John Armor, National Marine Sanctuary Program, 1305 East West Highway (N/ORM6), Silver Spring, MD 20910, telephone (301) 713–3125, extension 117, email *John.Armor@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Congress first granted NOAA the authority to issue special use permits for the conduct of specific activities in National Marine Sanctuaries (NMSs or Sanctuaries) in the 1988 Amendments to the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*; NMSA) (Public Law 100–627). The NMSA allows NOAA to issue special use permits to establish conditions of access to and use of any Sanctuary resource or to promote public use and understanding of a Sanctuary resource. Since 1988, special use permits have been issued to persons conducting usually commercial (and usually revenue-generating), otherwise prohibited, operations in NMSs. Such activities have included a diving concessionaire conducting trips to the USS Monitor, the filming of television advertisements, and the use of a Sanctuary for public events.

Section 310 of the NMSA allows NOAA to issue special use permits to authorize the conduct of specific activities with four conditions. The NMSA requires that special use permits:

1. Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Sanctuary is designated and with protection of Sanctuary resources;

2. Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by NOAA;

3. Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources; and

4. Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

Condition 3 above tends to be the most limiting in that it prevents NOAA from issuing a special use permit if the activity may destroy, cause the loss of, or injure a Sanctuary resource. Since activities that are prohibited by National Marine Sanctuary Program (NMSP) regulations (15 CFR Part 922) usually have some adverse impact, it is generally thought that if an activity is prohibited, it should not qualify for a special use permit. While this is generally true, there are some prohibited activities that, when done in a certain way, are not likely to adversely impact a Sanctuary resource. Several of these activities are of a nature that does not qualify for other NMS permits (for example, because they are not related to research or education), but do meet the statutory conditions for special use permits. Therefore, special use permits may be issued for the narrow range of activities that are both prohibited by NMSP regulations and do not destroy, cause the loss of, or injure a Sanctuary resource when conducted in a certain way.

Section 310 of the NMSA allows NOAA to assess and collect a fee for special use permits. A special use permit fee must include each of three components. They are:

1. The costs incurred, or expected to be incurred, by NOAA in issuing the permit;

2. The costs incurred, or expected to be incurred, by NOAA as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

3. An amount which represents the fair market value of the use of the Sanctuary resource.

Number 1 above essentially covers the administrative costs that NOAA incurs when it processes permit applications (including labor, printing costs, and contracts for the preparation of supporting documentation). Number 2 includes amounts to fund monitoring projects designed to assess the success or failure of the permittee to comply with the terms and conditions of the permit. It may also include money to fund a compliance monitoring program and to recoup any costs incurred by the NMSP in enforcing permit terms and conditions. Number 3 is calculated using economic valuation methods appropriate to the situation.

In the National Marine Sanctuaries Amendments Act of 2000 (P.L. 106–513), Congress added a new requirement that prior to requiring a special use permit for any category of activity, NOAA shall give appropriate public notice. Subsection (b) of section 310 of the NMSA, as amended by Public Law 106–513, provides: ''[NOAA] shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a).'' In addition, Public Law 106–513 gives the NMSP the authority to waive, reduce, or accept in-kind contributions in lieu of these fees when the activity does not derive a profit from the access to or use of Sanctuary resources.

This notice lists those categories of activities that have been subject to the requirements of Section 310 in the past and will continue to be in the future (unless NOAA issues a **Federal Register** notice indicating otherwise). All of these activities are currently prohibited by NMS regulations, and may only be permitted using a special use permit when conducted in a way that does not injure, cause the loss of, or destroy a Sanctuary resource. It is important to note that the fact that an activity is consistent with a category listed in this notice does not guarantee approval of an application for a special use permit. Special use permit applications will be reviewed for consistency with the relevant Sanctuary's management plan and regulations, the NMSA, as well as this **Federal Register** notice. Individual special use permit applications will also be reviewed with respect to all other pertinent regulations and statutes, including the National Environmental Policy Act. Additional categories of activities may be added in subsequent **Federal Register** notices, if the NMSP deems them appropriate for special use permits.

As such, the following categories of activities have been and will continue until further notice to be subject to the requirements of special use permits:

1. The disposal of cremated human remains by a commercial operator in any National Marine Sanctuary;

2. The operation of aircraft below the minimum altitude in restricted zones of National Marine Sanctuaries for commercial purposes;

3. The placement and subsequent recovery of objects associated with public events on non-living substrate of the seabed;

4. The discharge and immediate recovery of objects related to special effects of motion pictures; and

5. The maintenance of submarine cables beneath or on the seabed.

Each category listed above is further described below.

Disposal of Cremated Human Remains by a Commercial Entity

The NMSP has received permit applications to spread cremated human remains (i.e., ashes) over and within the Monterey Bay National Marine Sanctuary (MBNMS). Since most NMS regulations prohibit the discharge of material or other matter into the Sanctuary, this activity requires a permit. After an extensive review of the common practices involved with the

disposal of cremated human remains, the MBNMS determined that no detectable negative impacts to NMS resources and qualities were expected to result from the practice when certain conditions are adhered to by those engaged in the activity.

Conditions placed on this activity that eliminate negative impacts to Sanctuary resources include: restricting the minimum altitude of any aircraft used to facilitate the spreading of the ashes; prohibiting the use of any plastics or any other toxic material associated with the remains; and requiring that the remains be sufficiently incinerated.

In 1998, the superintendent of MBNMS issued an authorization (authorization number MBNMS–03–98) of the U.S. Environmental Protection Agency's (EPA) general permit for burial at sea (40 CFR 229.1). This authorization allows anyone (commercial entities as well as private individuals) to discharge cremated human remains in the MBNMS without first requesting a permit (subject to special conditions such as those described above). This authorization does not authorize anyone to conduct any activity otherwise prohibited by the MBNMS regulations except the discharge of cremated human remains (e.g., this authorization does not allow a person to operate an aircraft below 1,000 feet in one of the restricted overflight zones during the course of discharging cremated human remains). If an individual engaged in the disposal of cremated human remains wished to conduct an additional otherwise prohibited activity (e.g., low overflight) he would need to first obtain permission from the Sanctuary superintendent. This authorization expires on April 7, 2004 and does not apply to any other NMS in the system.

Commercial entities proposing the dispersion of cremated human remains must apply for and receive a special use permit prior to initiating this activity within the boundaries of any National Marine Sanctuary except MBNMS, as described above. (When private individuals wish to scatter cremated human remains in a NMS other than the MBNMS, they may request an individual authorization, if available, of the EPA's general permit from the appropriate Sanctuary manager or superintendent on a case-by-case basis.)

Commercial Overflights in Restricted Zones

Within certain zones of MBNMS, Olympic Coast National Marine Sanctuary (OCNMS), Channel Islands National Marine Sanctuary, and the Gulf of the Farallones National Marine Sanctuary operating an aircraft below a minimum altitude is prohibited by Sanctuary regulations (15 CFR Part 922). The minimum altitude for the zones within all aforementioned Sanctuaries, with the exception of OCNMS, is 1,000 feet. The minimum altitude for the zones within OCNMS is 2,000 feet.

The NMSP has received applications for permits to fly below the minimum altitude for commercial purposes within the restricted zones of MBNMS. Examples of commercial activities that have been subject to special use permits in the past include the filming of television advertisements and documentaries. When conditioned so that impacts to Sanctuary resources are eliminated, these activities have been determined to qualify for special use permits. Conditions on the permits generally include, but are not limited to, limitations on the number of passes an aircraft can take in a particular location, requirements for monitors to be present during operations, and seasonal restrictions so as to avoid certain areas during particularly sensitive times of the year.

All Sanctuaries with overflight restrictions have received requests to fly below the minimum altitude for non-commercial purposes (scientific research or education). These activities are eligible for research or education permit categories permittable under each site's regulatory authority and do not require the issuance of a special use permit.

Anyone wishing to operate an aircraft for commercial purposes below the designated altitude in any of the restricted overflight zones must apply for and receive a special use permit prior to conducting that activity.

The Placement and Subsequent Recovery of Objects Associated With Public Events on Non-Living Substrate

MBNMS has, in the past, issued special use permits to non-profit institutions and public entities to place temporary objects (e.g., marker buoys) on non-living portions of the seabed when that activity is associated with public events. Public triathlons and the California Chocolate Abalone dive are two such events that have been subject to special use permit requirements. Since the placement of objects on the seabed within most NMSs is prohibited by individual Sanctuary regulations, this activity usually requires a permit.

Conditions of special use permits for public events require that each object be placed on the seafloor in such a way as to not destroy, cause the loss of, or injure Sanctuary resources or qualities. The objects are required to be removed in a similar non-intrusive fashion after each event. In addition, the markers and other objects themselves are to be composed of substances that do not leach deleterious materials or other matter into the Sanctuary.

Special use permits are required for public events that involve the placement of objects on the seafloor in any National Marine Sanctuary. Anyone wishing to hold a public event that involves the placement of an object (or objects) on the seafloor of a National Marine Sanctuary must apply for and receive a special use permit prior to holding the event.

The Deposit and Immediate Recovery of Objects Related to Special Effects of Motion Pictures

The NMSP has received inquiries from motion picture companies seeking to deposit objects into a Sanctuary and immediately recover them for special effects. No special use permit has been applied for or issued for this type of activity to date. Sanctuary regulations generally prohibit the placement of objects on the seabed as well as the discharge of material or other matter into the Sanctuary. If the NMSP determines to allow this type of activity, persons proposing this activity would be required to prove to the NMSP that the objects being deposited would not injure, cause the loss of, or destroy any Sanctuary resource (e.g., are of a nature that would not cause harmful substances to leach into the Sanctuary, that the objects would be recovered from the Sanctuary immediately, and that the area of the seafloor where the object would be deposited is not sensitive to the proposed disturbance). In addition, Sanctuary staff would require that, if permitted, this type of activity is done at locations and during times of the year that are least likely to have sensitive Sanctuary resources in the vicinity of the disturbance.

Any individual or entity proposing to deposit any object into a National Marine Sanctuary related to special effects by the motion picture or other industry must apply for and receive a permit prior to conducting this activity within a National Marine Sanctuary.

The Maintenance of Commercial Submarine Cables on or Beneath the Seafloor

The NMSP has issued two special use permits to allow telecommunications companies to maintain fiber optic cables beneath the seafloor within the Olympic Coast National Marine Sanctuary (two cables permitted in November of 1999) and Stellwagen Bank National Marine Sanctuary (one cable permitted in June of 2000). While the actual installation,

removal, and any necessary repair activities were authorized under the NMSP's regulatory authority, the continued presence of the cable buried beneath the surface of the seabed was allowed through a special use permit issued pursuant to section 310 of the NMSA. This activity will continue to be subject to the requirements of section 310 of the NMSA.

In a separate process, NOAA will continue to develop its policy on submarine cables within National Marine Sanctuaries, following up on the August 23, 2000, Advance Notice of Proposed Rulemaking (ANPR) on Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries (65 FR 51264). The ANPR included a draft set of proposed principles for laying submarine cables in the marine and coastal environment. Through this separate process, NOAA will consider whether to issue regulations or a policy statement on submarine cables within Sanctuaries including whether the issuance of special use permits allowing the presence of submarine cables beneath or on the seafloor continues to be appropriate. Depending on the outcome of this process the NMSP may issue another **Federal Register** notice amending this one, as appropriate.

Comments

NMSP is accepting comments on its use of the special use permit authority. NMSP is especially interested in comments that pertain specifically to the impacts of the aforementioned activities on Sanctuary resources. NMSP is also interested in any other comments on the subject matter addressed in this notice.

Miscellaneous Requirements

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Applications for the special use permits discussed in this notice involves a collection-of-information requirement subject to the requirements of the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648–0141.

The collection-of-information requirement applies to persons seeking special use permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the terms and conditions of special use permits prescribed by the NMSA. Public reporting burden for this collection of information is estimated to average twenty four (24) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate also includes the significant time that may be required should the applicant choose to prepare a draft of any documentation that may be required under the National Environmental Policy Act (NEPA), e.g., environmental impact statement or environmental assessment. If the applicant chooses not to prepare a draft of any NEPA documentation for the proposed activity, or if only minimal NEPA documentation is needed, the public reporting burden would be much less (approximately one hour for each response). If additional NEPA documentation is required and not prepared in draft by the permit applicant, NOAA would be required to prepare this documentation using its own staff and resources prior to NOAA taking final action on the application. As staff time and funding resources are limited, the preparation of complicated NEPA documents can significantly add to the time NOAA takes to review the application and take final action.

This may also significantly add to the costs incurred by the federal government in processing the special use permit applications and thus the cost to the applicant.

Send comments on the burden estimate or on any other aspect of the collection of information, and ways of reducing the burden, to NOAA and OMB (see **ADDRESSES**).

National Environmental Policy Act

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment. This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.05c3(i) of NOAA Administrative Order 216–6. Specifically, this action is a notice of an administrative and legal nature. Furthermore, individual permit actions by the NMSP will be subject to additional case-by-case analysis, as required under NEPA, and will be completed when those actions are proposed to be taken by NMSP in the future.

NOAA also expects that many of these individual actions will also meet the criteria of one or more of the categorical exclusions described in NOAA Administrative Order 216–6 because special use permits cannot be issued for activities that are expected to result in any destruction of, injury to, or loss of any Sanctuary resource. However, the special use permit authority may at times be used to allow activities that may meet the Council on Environmental Quality's definition of the term ''significant'' despite the lack of apparent environmental impacts (e.g., publicly controversial activities). In addition, NOAA may, in certain circumstances, combine its special use permit authority with other regulatory authorities to allow activities not described above that may result in environmental impacts to NMS resources and thus require the preparation of an environmental assessment or environmental impact statement. In these situations NOAA will ensure that the appropriate NEPA documentation is prepared prior to taking final action on a permit or making any irretrievable or irreversible commitment of agency resources.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–12521 Filed 5–17–02; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 19, 2002.

Title, Form, and OMB Number: Customer Service Survey—Regulatory Program U.S. Army Corps of Engineers; ENG For 5065; OMB Number 0710–0012.

Type of Request: Reinstatement.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 15,000.

Needs and Uses: Survey of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements. The Corps will conduct surveys of customers at our districts, division, and headquarters offices, currently a total of 49 offices. Most customer responses are solicited from the 38 districts. These elements will tabulate their survey results and send copies to headquarters for a Corps wide tabulation. The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-for-Profit Institutions; Farms; State, Local of Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for the U.S. Army Corps of Engineers, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate SOD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12499 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 19, 2002.

Title, Form, and OMB Number: Terminal and Transfer Facilities Description; IWR Forms 1, 2, 3, 4, 5, 6, 7, 8, and 9; OMB Number 0710–0007.

Type of Request: Reinstatement.

Number of Respondents: 1,489.

Responses per Respondent: 1.

Annual Responses: 1,489.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 372.

Needs and Uses: Data gathered and published as one of the 56 Port Series Reports, relating to terminals, transfer facilities, storage facilities, and intermodal transportation. This information is used in navigation, planning, safety, National Security, emergency operations, and general interest studies and activities. Respondents are terminal and transfer facility operators. These data are essential to the Waterborne Commerce Statistics Center in exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Affected Public: Business or Other For-Profit; State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for the U.S. Army Corps of Engineers, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12500 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 19, 2002.

Title, Form, and OMB Number: Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage Shipments; DD form 619, 619–1; OMB Number 0702–0022.

Type of Request: Reinstatement.

Number of Respondents: 2,636.

Responses per Respondent: 168 (average).

Annual Responses: 441,677.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 70,548.

Needs and Uses: The information provided by a carrier serves as a bid for contract to transport household goods (HHG), unaccompanied baggage, mobile homes, and boats. In accordance with the provisions of DoD 4500.9–R, the DD Form 619 is used by the household goods carrier industry to itemize packing material and other charges for billing purposes on household goods and unaccompanied baggage shipments. The DD form 619 certifies that accessorial services were actually performed.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlingtom, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12501 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 19, 2002.

Title, Form, and OMB Number: Application and Contract for Establishment of a Reserve Officers' Training Corps Unit; DA Form 3126; OMB Number 0702–0021.

Type of Request: Extension.

Number of Respondents: 70.

Responses per Respondent: 1.

Annual Responses: 70.

Average Burden per Response: 1 hour.

Annual Burden Hours: 70.

Needs and Uses: Educational institutions desiring to host a Junior ROTC Unit may apply by using DA Form 3126. The form documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126 provides information on the school's facilities and states specific conditions, if an ROTC Unit is placed at the institution. The data provided is used to determine which schools are selected.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12502 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 19, 2002.

Title, Form, and OMB Number: Uniform Tender of Rates and/or Charges for Domestic Transportation Services (DoD/USCG Sponsored Household Goods; MT Form 43–R; OMB Number 0702–0018.

Type of Request: Reinstallment.

Number of Respondent: 1,580.

Response per Respondent: 1.

Annual Responses: 6,320.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 3,160.

Needs and Uses: Department of Defense approved household goods carriers file rates to engage in the movement of DoD and United States Coast Guard sponsored shipments within the continental United States. Headquarters, Military Traffic Management Command evaluates the rates and awards the traffic to low rate responsible carriers whose rates are responsive and most advantageous to the Government.

Affected Public: Business or Other For-Profit.

Frequency: Semi-Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12503 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 19, 2002.

Title, Form, and OMB Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1172; OMB Number 0704–0020.

Type of Request: Extension.

Number of Respondents: 1,690,048.

Responses per Respondent: 1.

Annual Responses: 1,690,048.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 281,675.

Needs and Uses: This information collection requirement is necessary to authorize members of the Uniformed Services, their spouses and dependents, and other authorized individuals certain benefits and privileges. These privileges include health care, use of commissary, base exchange, and morale, welfare and recreation facilities. This information collection is needed to obtain the necessary data to determine eligibility to benefits and privileges, to provide eligible individuals with an authorization card (identification card) for benefits and privileges administered by the Uniformed Services, and to maintain a centralized database of eligible individuals. This information collection may also be used by the Uniformed Services, military departments, and the Defense Agencies to issue their non-benefit identification cards.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12504 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 19, 2002.

Title, Form, and OMB Number: Procurement Technical Assistance Center Cooperative Agreement Performance Report; DLA Form 1806; OMB Number 0704–0320.

Type of Request: Reinstatement.

Number of Respondents: 89.

Responses per Respondent: 2.

Annual Responses: 178.

Average Burden Per Response: 7 hours.

Annual Burden Hours: 1,246.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreements awards made under 10 U.S.C. Chapter 142. Each cooperative agreement award recipient submitted goals and objectives in their application that were subsequently incorporated into their cooperative agreement awards. The level of achievement of these goals and the funds expended in the process of conducting the program is measured by the report. The government's continued funding of a cooperative agreement and the decision to exercise an option award is based to a significant degree on the award holder's current performance as measured by the report. Information from the report is also used to identify programs that may be in need of assistance and/or increased surveillance.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: Semi-Annually.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–12505 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments to the Manual for Courts-Martial, United States (2000 ed.) and notice of public meeting.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States (2000 ed.) (MCM). The proposed changes constitute the 2002 annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. The proposed changes concern the rules of procedures and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

In accordance with paragraph III.B.4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the described format.

DATES: Comments on the proposed changes must be received no later than July 30, 2002 to be assured consideration by the JSC. A public meeting will be held on June 27, 2002 at 2 p.m. in Room 808, 1501 Wilson Boulevard, Arlington, VA 22209–2403.

ADDRESSES: Comments on the proposed changes should be sent to Major D. T. Brannon, Headquarters, U.S. Marine Corps (JAM), 2 Navy Annex, Room 5E618, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Major D. T. Brannon, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (JAM), 2 Navy Annex, Room 5E618, Washington, DC 20380–1775, (703) 614–4250, (703) 695–0335 fax.

SUPPLEMENTARY INFORMATION: The proposed amendments to the MCM are as follows:

Amend R.C.M. 103(2) by deleting ''without'' and replacing with ''with'' and by deleting ''noncapital'' and replacing with ''capital.''

Amend the Analysis accompanying R.C.M. 103(2) by inserting the following prior to the discussion of subsection (3):

''200__ Amendment: This definition is based on *United States* v. *Mathews,* 16 M.J. 354 (C.M.A. 1983), and R.C.M. 1004, and is consistent with the numerous affirmative steps required of a convening authority in order to refer a court-martial case as capital. See R.C.M. 1004 and accompanying analysis at Appendix 21, R.C.M. 1004.''

Amend R.C.M. 201(f)(1)(A)(iii)(b) by substituting the following therefor:

''(b) The case has not been referred with a special instruction that the case is to be tried as capital.''

Amend the Analysis accompanying R.C.M. 201(f) by inserting the following prior to the discussion of subsection (f)(2):

''200__ Amendment: Subsection (1)(A)(iii)(b) was changed to reflect that a convening authority must affirmatively act to refer a capital punishment eligible offense for trial as a capital case.''

Amend R.C.M. 307(c)(4) by inserting the following at the end thereof:

''What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.''

Amend the Discussion accompanying R.C.M. 307(c)(4) by striking the first sentence.

Amend the Analysis accompanying R.C.M. 307(c)(4) by inserting the following prior to the discussion of subsection (c)(5):

''200 Amendment: The first sentence of the non-binding discussion was moved, en toto, to subsection (4) to reflect the decision of *United States* v. *Quiroz,* which identifies the prohibition against the unreasonable multiplication of charges as a ''a long-standing principle of military law. See United States v. Quiroz, 55 M.J. 334 (CAAF 2001).''

Amend R.C.M. 501(a)(1)(A) to read as follows:

''(A) A military judge and, except in capital cases, not less than five members.''

Amend R.C.M. 501(a)(1) by inserting the following subparagraph (C) to read as follows:

''(C) In all capital cases, a military judge and no fewer than twelve members, unless twelve members are not reasonably available because of physical conditions or military exigencies. If fewer than twelve members are reasonably available, the convening authority shall detail the next lesser number of reasonably available members under twelve, but in no event fewer than five. In such a case, the convening authority shall state in the convening order the reasons why twelve members are not reasonably available.''

Amend R.C.M. 805(b) is amended by replacing the current second sentence with the following:

''No general court-martial proceeding requiring the presence of members may be conducted unless at least 5 members are present, or in capital cases, at least twelve members are present except as provided in R.C.M. 501(a)(1)(C), where twelve members are not reasonably available because of physical conditions or military exigencies. No special court-martial proceeding requiring the presence of members may be conducted unless at least 3 members are present except as provided in R.C.M. 912(h).''

Amend R.C.M. 1003(b) (2) by deleting ''foreign'' and substituting ''hardship'' therefor.

Amend the Analysis accompanying R.C.M. 1003(b) (2) by inserting the following paragraph:

''200____Amendment: Hardship Duty Pay (HDP) superseded Foreign Duty Pay (FDP) on 3 February 1999. HDP is payable to members entitled to basic pay. The Secretary of Defense has established that HDP will be paid to members (a) for performing specific missions, or (b) when assigned to designated areas.''

Amend R.C.M. 1004(b) by inserting the following after ''(1) Notice.'' and before ''Before'':

''(A) Referral. The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided:

(i) that the convening authority has otherwise complied with the notice requirement of subsection (B); and

(ii) that if the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

(B) Arraignment.''

Amend the analysis accompanying R.C.M. 1004(b) by substituting the following paragraph for the current first paragraph:

''200____Amendment: Subsection (1) (A) is intended to provide early and definitive notice that the case has been referred for trial as a capital case. Subsection (1) (B) is intended to provide the defense written notice of the aggravating factors it intends to prove, yet afford some latitude to the prosecution to provide later notice, recognizing that the exigencies of proof may prevent early notice in some cases.''

Insert the following new R.C.M. 1103A to read as follows:

''Sealed exhibits and proceedings. If the record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, the trial counsel shall cause such materials to be sealed so as to prevent indiscriminate viewing or disclosure. Trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the record shall contain appropriate annotations that matters were sealed by order of the military judge and have been inserted in the original record of trial. Except as provided in the following subsections to this rule, sealed exhibits may not be opened by any party.

(1) Examination of sealed matters. For the purpose of this rule, ''examination'' includes unsealing the sealed documents, reading, viewing, or manipulating them in any way. ''Examination'' under this rule does not include photocopying, photographing, duplicating, or disclosing in any manner in the absence of an order from appropriate authority.

(A) Prior to authentication. Prior to authentication of the record by the military judge, sealed materials may not be examined in the absence of an order from the military judge based on good cause shown.

(B) Authentication through action. After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order. Such order may be issued from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the Convening Authority.

(C) Reviewing and appellate authorities.

(i) Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure or rules of professional responsibility.

(ii) Reviewing and appellate authorities shall not, however, disclose sealed matter or information in the absence of:

(a) Prior authorization of the Judge Advocate General in the case of review under Rule for Courts-Martial 1201 (b); or

(b) Prior authorization of the appellate court before which a case in pending in the case of review under Rules for Courts-Martial 1203 and 1204.

(iii) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

(iv) The authorizing officials in paragraph (ii) above may place conditions on authorized disclosures in order to minimize the disclosure.

(v) Reviewing and appellate authorities include:

(a) Judge advocates reviewing records pursuant to Rule for Courts-Martial 1112;

(b) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to Rule for Courts-Martial 1201(b);

(c) Appellate government counsel;

(d) Appellate defense counsel;

(e) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(f) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(g) The Justices of the United States Supreme Court and their professional staff; and

(h) Any other court of competent jurisdiction.''

Insert the following Analysis to accompany new R.C.M. 1103A:

''200____Amendment: The 1998 amendments to the Manual for Courts-Martial introduced the requirement to seal M.R.E. 412 (rape shield) motions, related papers, and the records of the hearings, to ''fully protect an alleged victim of [sexual assault] against invasion of privacy and potential embarrassment.'' MCM Appendix 22, p. 36. As current rule 412(c)(2) reads, it is unclear whether appellate courts are bound by orders sealing 412 information issued by the military judge. *See, e.g., United States* v. *Stirewalt,* 53 M.J. 582 (C.G.C.C.A. 2000).

On a larger scale, the effect and scope of a military judge's order to seal exhibits, proceedings, or materials is similarly unclear. Certain aspects of the military justice system, particularly during appellate review, seemingly mandate access to sealed materials. For example, appellate defense counsel have a need to examine an entire record of trial to advocate thoroughly and knowingly on behalf of a client. Yet there is some uncertainty about appellate defense counsel's authority to examine sealed materials in the absence of a court order.

The rule is designed to respect the privacy and other interests that justified sealing the material in the first place, while at the same time recognizing the need for certain military justice functionaries to review that same

information. The rule favors an approach relying on the integrity and professional responsibility of those functionaries, and assumes that they can review sealed materials and at the same time protect the interests that justified sealing the material in the first place. Should disclosures become necessary, then the party seeking disclosure is directed to an appropriate judicial or quasi-judicial official or tribunal to obtain a disclosure order.''

Amend Manual for Courts-Material, Part IV, Paragraph 14c(2)(a), by inserting the following new subparagraph (ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

''(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.''

Amend Manual for Courts-Martial, Part IV, Paragraph 109, by deleting the current text and replacing with the following:

''109. Article 134—Threat or Hoax Designed or Intended To Cause Panic or Public Fear

a. Text. See paragraph 60.

b. Elements.

(1) Threat.

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance, or weapon, or hazardous material;

(d) That the communication was wrongful; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) Hoax.

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance or weapon, or hazardous material to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false;

(d) That the communication of the information by the accused was malicious; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation:

(1) Threat. A ''threat'' means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage, or destroy is not required.

(2) Explosive. ''Explosive'' means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(3) Weapon of mass destruction. A weapon of mass destruction is a device designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; or any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

(4) Biological agent. The term ''biological agent'' means any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method production, that is capable of causing—

(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(ii) deterioration of food, water equipment, supplies, or materials of any kind; or

(5) Chemical agent, substance, or weapon. A chemical agent, substance or weapon refers to a toxic chemical and its precursors and or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals which would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(6) Hazardous material. A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(7) Malicious. A communication is ''malicious'' if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. Lesser included offenses.

(1) Threat

(a) Article 134—communicating a threat

(b) Article 80—attempts

(c) Article 128—assault

(2) Hoax. Article 80—attempts

e. Maximum punishment. Dishonorable discharge, forfeitures of all pay and allowances and confinement for 10 years.

f. Sample specifications.

(1) Threat.

In that _____ (personal jurisdiction data) did, (at/on board—location) on or about _____20____, wrongfully communicate certain information, to wit: _____, which language constituted a threat to harm a person or property by means of a(n) [explosive, weapon of mass destruction, biological agent or substance, chemical agent or substance and/or (a) hazardous material[s])].

(2) Hoax.

In that _____ (personal jurisdiction data) did, (at/on board—location), on or about _____ 20 ____, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) _____] [(damage) (destroy) _____] by means of a(n) [explosion, weapon of mass destruction, biological agent or substance, chemical agent or substance, and/or (a) hazardous material(s)], to wit: _____, which information was false and which the accused then knew to be false.''

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph c, by inserting the following at the end thereof:

''200 ____ Amendment: This paragraph has been expanded to annunciate the various means by which a threat or hoax is based. Whereas explosives were the instruments most commonly used in the past, new types of weapons have developed. These devices include weapons of mass destruction, chemical agents, biological agents, and hazardous materials.''

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph e, by inserting the following at the end thereof:

''200 ____ Amendment: This amendment increases the maximum punishment currently permitted under paragraph 109 from 5 years to 10 years. Ten years is the maximum period of confinement permitted under 18 U.S.C. 844(e), the U.S. Code section upon which the original paragraph 109 is based.

Amend the Analysis accompanying Punitive Article 90 by inserting the following new subparagraph c(2)(a)(ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

''200____ Amendment: The Court of Appeals for the Armed Forces held that the lawfulness of an order is a question of law to be determined by the military judge, not the trier of fact. See United States v. New, 55 M.J. 95 (C.A.A.F.).''

Dated: May 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–12636 Filed 5–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of visitors (BoV) will be held in the Packard Conference Center. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: Thursday, June 20, 2002 from 09001500.

ADDRESSES: Packard Conference Center, Building 184, Fort Belvoir, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Reid, 703–805–5133.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Diane Reid at 703–805–5133.

Dated: May 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 02–12506 Filed 5–7–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 10/059, 978 entitled ''Pulsed Laser Deposition of Polymer Thin Films Using a Tunable Infrared Laser'', Navy Case No. 82,974.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 13, 2002.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–12511 Filed 5–17–02; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Friday, May 31, 2002. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public. The conference session will be held at Grey Towers, 151 Grey Towers Drive, Milford, Pennsylvania. The business meeting also will be held at Grey Towers, unless there is a possibility of bad weather in the afternoon or evening. In that event, the business meeting will be held at the Best Western Inn at Hunt's Landing, 120 Route 6 and Route 209, also in Milford, Pennsylvania. In case of doubt about the hearing location, contact the DRBC on May 31 at 609–883–9500. Directions to both locations are posted on the Commission's web site, *http://www.DRBC.net.*

The conference among the Commissioners and staff will begin at 10 a.m. Topics of discussion will include: an update on a proposal for protecting existing water quality in the Lower Delaware River pending a possible special protection waters designation; an update on PCB TMDL development and sampling activities; a proposed resolution authorizing the Executive Director to engage a consultant to assist in development of a PCB fate and transport model for the Delaware Estuary; a proposal to engage the Chesapeake Biological Laboratory of the University of Maryland to conduct carbon analytical work in connection with development of a TMDL for PCBs in the Delaware Estuary; a report on the May meeting of the DRBC's Flow Management Technical Advisory Committee; and proposed resolutions authorizing the Executive Director to renew DRBC's contract with the Northeast-Midwest Institute and to engage a consultant to perform a position classification and compensation analysis.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below, a resolution amending Article 8 of the *Administrative Manual—Rules of Practice and Procedure* relating to fees associated with Commission responses to Freedom of Information Act (''FOIA'') requests. In the event a resolution or docket is considered involving modification of the Commission's Comprehensive Plan to adjust releases from the New York City Reservoirs to protect tailwaters fisheries, then a hearing on such proposal also will be held. Please contact the Commission Secretary after May 16 for information on the status of this item.

The dockets scheduled for public hearing are as follows:

1. *Boyertown Foundry Company D–85–80 RENEWAL 2.* A renewal of a ground water withdrawal project to supply up to 3.54 million gallons (mg)/30 days of water to the applicant's foundry facility (formerly Eastern Foundry Company) from existing Well No. 1A in the Leithsville Dolomite Formation. No increase in allocation is proposed. The project is located in Boyertown Borough, Berks County, Pennsylvania.

2. *Schwenksville Borough Authority D–98–30 CP.* A project to increase the rated capacity of the applicant's existing 0.206 million gallons per day (mgd) sewage treatment plant (STP) to 0.3 mgd. The STP will continue to provide secondary biological treatment via trickling filter and activate sludge systems to serve the Borough of Schwenksville and adjacent portions of Perkiomen and Lower Frederick Townships, all in Montgomery County, Pennsylvania. The STP is situated just west of Perkiomen Creek, to which it will continue to discharge, and just east of State Route 73 between Church and Maple Streets in the Borough of Schwenksville, Montgomery County, Pennsylvania.

3. *McGinley Mills, Inc. D–91–55 RENEWAL.* A renewal of a ground water withdrawal project to continue withdrawal of 13.4 mg/30 days to supply the applicant's industrial facility from existing Wells Nos. 1 and 2 in the Allentown formation. The project is located in the Town of Phillipsburg, Warren County, New Jersey

4. *Maidencreek Township Authority D–91–58 CP RENEWAL.* A renewal of a ground water withdrawal project with an increase of withdrawal from 13.2 mg/30 days to 22.7 mg/30 days to supply the applicant's public water distribution system from existing Wells No. 1, 2, and 3 in the Epler and Allentown formations. The project is located in Maidencreek Township, Berks County, Pennsylvania.

5. *New Jersey Department of Corrections—Bayside State Correctional Facility D–2000–10 CP.* A ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's correctional facility and farm from new Well No. 5 in the Cohansey-Kirkwood aquifer and to retain the withdrawal limit from all wells at 30 mg/30 days. The project is located in Maurice River Township, Cumberland County, New Jersey.

6. *Pennridge Wastewater Treatment Authority D–2001–1 CP.* A project to expand the applicant's existing advanced secondary STP from 4.0 mgd to 4.325 mgd via trickling filter and chemical addition processes. Located in both West Rockhill Township and Sellersville Borough, both in Bucks County, Pennsylvania, the STP will serve the Boroughs of Perkasie, Sellersville, Silverdale and Telford, and the Townships of East Rockhill, Hilltown and West Rockhill, all in Bucks County. Treated effluent will continue to be discharged to the adjacent East Branch Perkiomen Creek through an existing outfall.

7. *West Vincent Township D–2001–60.* A project to construct a 0.11 mgd aerated-lagoon type STP and effluent spray irrigation system to serve proposed housing and commercial office development on the northeast corner of Routes 100 and 401 in West Vincent Township, Chester County, Pennsylvania. Following secondary treatment, effluent will be sprayed on 22 acres of adjacent farm and wooded lands. During inclement weather, STP effluent can be stored in on-site lagoons, so no discharge to nearby Birch Run Creek in the French Creek watershed is required.

8. *Tidewater Utilities, Inc. D–2002–4 CP.* A ground water withdrawal project to supply up to 7.95 mg/30 days of water to the applicant's public water distribution system from new Wells Nos. L5 and L9 in the Columbia Formation. Wells Nos. L5 and L9 will be interconnected with the applicant's eleven other wells, which are located outside the Delaware River Basin. The project is located in the Broadkill River watershed in Lewes/Rehoboth, Sussex County, Delaware.

9. *Philadelphia Suburban Water Company D–2002–5 CP.* A ground water withdrawal project to supply a combined total of 6.26 mg/30 days of water to the applicant's public water supply distribution system from new Kay Wells B and C, to be interconnected with nine existing wells currently comprising the Pennsylvania Suburban Water Company (PSW) UGS Northern Division service area, and to limit the withdrawal from all wells to 15.86 mg/30 days. Kay Well B is to be allocated at 2.80 mg/30 days and Kay Well C at 3.45 mg/30 days. The project is located in the Beaver Creek watershed in East Brandywine Township, Chester County, Pennsylvania. As proposed in the PADEP draft water supply permit, Special Condition I, the Kay Wells would be removed from service once a water treatment plant receiving water from PSW's Cornog Quarry Project (a proposed surface water withdrawal and storage project on the East Branch Brandywine Creek in Wallace Township, Chester County) is placed into operation. At such time, the DRBC's combined total allocation for the remaining wells is proposed to be limited to 9.6 mg/30 days.

10. *Kidder Township D–2002–6 CP.* A project to expand the 0.15 mgd Split Rock STP to process 0.4 mgd, while continuing to provide a tertiary level of treatment. The applicant proposes to purchase the existing STP from Vacation Charters, Ltd. and expand the sequencing batch reactor plant to serve future development at the Split Rock Resort and current flows from properties in the Lake Harmony and Split Rock areas, all within Kidder Township, Carbon County, Pennsylvania. The project is located about 2 miles west of the intersection of Interstate 80 and State Route 115. The existing STP owner will retain a spray irrigation permit to apply the effluent to its resort golf course, as needed, or allow it to discharge to Shingle Mill Run, a tributary of Tobyhanna Creek in the Lehigh River Watershed.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the April 3, 2002 business meeting; announcements; a report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; discussion and possible Commission response to requests for a hearing to review the Commission's action on Docket D–98–11 CP of the Pennsylvania Suburban Water Company (formerly Philadelphia Suburban Water Company); and resolutions (1) authorizing the Executive Director to engage a consultant to assist in development of a PCB fate and transport model for the Delaware Estuary; (2) authorizing the Executive Director to engage the Chesapeake Biological Laboratory of the University of Maryland to conduct carbon analytical work in connection with development of a TMDL for PCBs in the Delaware Estuary; (3) authorizing the Executive Director to renew DRBC's contract with the Northeast-Midwest Institute; (4) authorizing the Executive Director to engage a consultant to performing a position classification and compensation analysis; (5) providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year 2002–03, commencing July 1, 2002; and (6) honoring N.G. Kaul. The meeting will conclude with an opportunity for public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: May 14, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–12534 Filed 5–17–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 14, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: William D. Ford Federal Direct Loan Program Deferment Request Forms (JS).

Frequency: On Occasion.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 143030.

Abstract: These forms serve as the means by which the U.S. Department of Education collects the information needed to determine whether a Direct Loan borrower qualifies for a loan deferment.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 1953. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his Internet address *joe.schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–12509 Filed 5–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.214A]

Migrant Education Even Start Program

AGENCY: Department of Education.

Notice inviting applications for new awards for fiscal year (FY) 2002.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations, the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Migrant Education Even Start (MEES) program is designed to help break the cycle of poverty and improve the literacy of participating migratory families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified family literacy program.

Eligible Applicants: While any entity is eligible to apply for a grant under the MEES program, the Assistant Secretary for Elementary and Secondary Education specifically invites applications from State educational agencies (SEAs) that administer migrant education programs; local educational agencies (LEAs) that have a high percentage of migratory students; non-profit community-based organizations that work with migratory families; and faith-based organizations, provided that they meet all statutory and regulatory requirements.

The Assistant Secretary also invites applications from novice applicants. ''Novice applicant'' means any applicant for a grant from the U.S. Department of Education (the Department) that has never received a grant or subgrant under the MEES program; has never been a participant in a group application, submitted in accordance with sections 75.127–75.129 of the Education Department General Administrative Regulations (EDGAR), that received a grant under the program from which it sought funding; and has not had an active discretionary grant from the Federal Government in five years before the deadline date for applications under the MEES program. (34 CFR 75.225.)

The Assistant Secretary has determined that special consideration of novice applications is appropriate and will give competitive preference of 5 points to eligible novice applicants under the procedures in 34 CFR 75.105 (c)(2). In addition, before making a grant to a novice applicant, the Assistant Secretary imposes special conditions, if necessary, to ensure that the grant is managed effectively and project objectives are achieved.

(Authority 20 U.S.C. 1221e–3 and 3474.)

Deadline for Transmittal of Applications: July 5, 2002.

Deadline for Intergovernmental Review: September 3, 2002.

Available Funds: For FY 2002, approximately $7,000,000 is available for this program.

Estimated Range of Awards: $75,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 20–25.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99. (b) The definitions of a migratory child, a migratory agricultural worker and a migratory fisher contained in 34 CFR 200.40.

Waiver of Proposed Rulemaking: In the ''Program Description'' and ''Required Program Elements'' sections of this notice, the Assistant Secretary has interpreted provisions in ESEA sections 1231 and 1235 to require an emphasis on reading proficiency as the basis for academic success in program that underscores programs such as Reading First and Early Reading First.

It is the Assistant Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules and competitive preferences. Section 437(d)(1) of the General Education

Provisions Act (GEPA), however, allows the Assistant Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The Assistant Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

Description of Program: Under the authority of section 1232(a)(1)(A) of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001, the Assistant Secretary awards grants to eligible applicants under the MEES program for projects that—

(1) Improve the educational opportunities of migratory families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified program of family literacy services.

(**Note:** Each project must use the grant funds to provide intensive family literacy services that involve parents and children, from birth through age seven, in a cooperative effort to help parents become full partners in the education of their children and to help children in reaching their full potential as learners. See ESEA section 1234(a).)

As defined in ESEA section 9101(20) ''Family literacy services'' means services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Opportunities for parents, the first teachers, to improve the academic achievement of the their children.

(C) Adult literacy training that advances parents reading achievement and academic success.

(D) An early childhood education that improves reading readiness and prepares children for success in school.

(2) Are implemented through cooperative projects that build on high-quality existing community resources to create a new range of services.

(3) Promote the academic achievement of children and adults.

(4) Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student academic achievement standards; and

(5) Use instructional programs based on scientifically based reading research and the prevention of reading difficulties for children and adults.

Program Requirements:

Eligible participants. Eligible MEES participants consist of migratory children and their parents as defined in 34 CFR 200.30 and 200.40 who also meet the following conditions specified in ESEA, section 1236(a):

(1) The parent or parents—

(i) Are eligible for participation in an adult basic or adult secondary education program under the Adult Education and Family Literacy Act; or

(ii) Are younger than the State's compulsory school attendance age, as long as a local educational agency provides (or ensures the availability of) the basic education component MEES requires, or who are attending secondary school; and

(2) The child or children of the parent described in paragraph (c) must be younger than eight years of age.

(**Note:** Family members of eligible participants described in paragraphs (a)(1) and (a)(2) may also participate in MEES activities. These participants may include siblings, grandparents, and other family members so long as one or more eligible children and their parents or guardian participate in the core services. In addition, section 1236(b) of the ESEA, as amended, permits families to remain eligible for MEES services until all family members become ineligible to participate. For example, in the case of a family in which the parent or parents lose eligibility because of their educational advancement, the parent or parents can still participate in MEES activities until all children in the family reach age eight. When all children in the family have reached age eight, the family continues to be eligible for Even Start services for two more years (until the youngest participating child turns ten) or until the parents are no longer eligible for adult basic education under the Adult Education and Family Literacy Act, whichever occurs first. In addition, the Department interprets 34 CFR 200.30 together with ESEA section 1236(b)(3), to mean that MEES services may continue to be provided to a parent or child who is no longer migratory, provided that the family has at least one parent or child who is a migratory worker or migratory child as these terms are defined under 34 CFR 200.40.)

Required program elements. Any MEES project must, at a minimum, incorporate the following program elements specified in ESEA section 1235:

1. Identification and recruitment of migratory families most in need of MEES services, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.

(**Note:** MEES program services may be provided in communities where migratory families have resided for extended periods of time. 34 CFR 200.30 and 200.40 permit children to be eligible for MEES services for up to three years after the children make a move that makes them eligible for the Migrant Education Program (MEP). However, in developing and using their need-related indicators to identify and recruit those families most in need of MEES program services, the Assistant Secretary believes that the most effective MEES projects are likely to focus on families that are highly mobile or who have only recently moved to the communities that projects propose to serve. In this regard, the MEP statute (section 1304(d) of the ESEA) requires that migratory students whose education has been interrupted and who are at most risk of failing be given a priority for the services that the program offers. While this MEP priority is not an explicit requirement of the MEES program, we assume, given the purpose of the MEES program, that those families receiving a priority under the MEP also have the greatest need for MEES services.)

2. Screening and preparation of children and parents, including teenage parents, to enable them to participate fully in program activities and services, including testing, referral to necessary counseling, and other developmental and support services.

3. High-quality, intensive instructional programs that teach reading skills and informs parents how to support the educational growth of their children; developmentally appropriate early childhood educational services; and preparation of children for success in the regular school programs.

4. Accommodation of participants' work schedules and other responsibilities, including the provision of support services necessary for participation in the activities, when such services are unavailable from other sources, such as—

(A) Scheduling and locating services to allow joint participation by parents and children;

(B) Child care for the period that parents are participating in the program provided under this part; and

(C) Transportation to enable parents and their children to participate in the MEES program;

5. Qualifications of project staff whose salaries are paid partially or totally with MEES or other federal Even Start funds. Projects must meet the following requirements:

(A) A majority of the staff providing academic instruction (1) must have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary or secondary school education, or adult education, and, (2) if applicable, must meet State qualifications for early childhood, elementary, or secondary school education, or adult education provided as part of an Even Start

program or another family literacy program.

(i) By December 21, 2004, the individual responsible for MEES local project administration must have received training in the operation of a family literacy program; and

(ii) By December 21, 2004, paraprofessionals who provide support for academic instruction must have a high school diploma or its recognized equivalent.

6. Special training of staff, including childcare staff, to develop the skills necessary to work with parents and young children in the full range of instructional services that MEES offers.

7. Provision and monitoring of integrated instructional services to participating parents and children through home-based activities.

8. Operation on a year-round basis, including the provision of instructional and enrichment services, during the summer.

Note: For MEES projects, the Assistant Secretary interprets the requirement for year-round services to mean that project activities must be conducted throughout the period in which participating migratory families reside in the project area, and that alternative activities or services are offered when participating families work and reside outside the project area.

9. Recruitment and retention that encourages participating families to attend regularly and remain in the program for a period of time sufficient to meet their program goals.

10. Promotion of the continuity of family literacy, if applicable, to ensure that individuals retain and improve their educational outcomes.

11. Appropriate coordination with other ESEA programs, any relevant programs under the Adult Education and Family Literacy Act, the Individuals with Disabilities Education Act, Title I of the Workforce Investment Act of 1998, Head Start, volunteer literacy programs, and other relevant programs.

Note: In addition, to promoting strong community collaboration, ESEA sections 1232(e) and 1237(a) require applicants for grants under the SEA-administered Even Start Family Literacy program administered by SEAs to be partnerships composed of: (1) A local educational agency (LEA), and (2) a non-profit community-based organization, a public agency other than an LEA, an institution of higher education, or a public or private nonprofit organization of demonstrated quality other than an LEA. While these provisions are not requirements of the MEES program, the Assistant Secretary believes that the most effective MEES projects are also likely to contain strong, on-going collaborative relationships among these kinds of local entities.

12. Use of instructional programs based on scientifically based reading research (as defined in ESEA section 1208) for children and adults.

13. Include preschool reading skills for preschool children that are based on scientifically based reading research, to ensure that children enter school ready to learn to read.

14. Provide for an independent evaluation of the program to be used for program improvement.

Note: The Assistant Secretary encourages projects to use evaluators for MEES projects who understand the family literacy model, who are able to work with the project as a partner in designing the evaluation, and who will help the project use its on-going evaluation results in a way that ensures continuous program improvement.

Federal and local funding. A MEES project's funding is composed of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local share). ESEA section 1234 states that the Federal share of the program may not exceed—

- 90 percent of the total cost of the project in the first year of the applicant's first project period;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year;
- 50 percent in the fifth, sixth, seventh, and eighth years; and
- 35 percent in any following year.

Note: Applicants who are applying for continuations of MEES projects for the fifth year and beyond must meet the 50 per cent match in their fifth through eighth years and the 65 per cent local match in their ninth year and beyond.

The local share of the MEES project may be provided in cash or in kind, fairly evaluated, and may be obtained from any source, including other ESEA programs. Indirect costs are not an allowable cost either for the Federal share or the matching portion of a MEES project.

Invitational Priority

The Assistant Secretary is especially interested in receiving applications that include a plan demonstrating that grant activities will focus on one or more approaches described in this section. However, an application that meets one of more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Coordination across SEAs and LEAs is at the heart of migrant education's purpose: preventing or mitigating disruptions in the education of qualifying migratory students. Seasonal MEES projects may not be of sufficient duration to effect long-term gains for parents or students.

Therefore, to promote opportunities for continuous learning by migratory families, the Assistant Secretary is particularly interested in receiving applications that propose to do one or more of the following:

- Create Federal, State, and local partnerships that improve reading proficiency and advance English language acquisition so that migratory children enter elementary school with strong early reading skills.
- Plan long-range, intensive family literacy services that engage migrant families wherever they move outside the project area in order to eliminate disruptions in the education of participating families.
- Build networks with agricultural employers that will supplement resources available to develop English proficiency for migratory agricultural families with limited English or native-language literacy.

Selection Criteria

The Assistant Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum score for all of these criteria is 100 points. However, novice applicants will be awarded an additional 5 points, which could result in a maximum score of 105 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute.* (5 points)

The Assistant Secretary reviews each application to determine how well the project will—

(1) Improve the educational opportunities of migratory families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified family literacy program.

(2) Be implemented through cooperative projects that build on existing community resources to create a new range of services to migratory families.

(3) Promote the achievement of family literacy goals (particularly the goals that address school readiness, student achievement, adult literacy, and parent involvement and participation in their child's early education) through research-based reading and English-language acquisition practices that meet the diverse needs of the migrant community of learners.

(4) Assist children and adults from migratory families to achieve challenging State content standards and

challenging State student academic achievement standards.

(b) *Need for project.* (15 points) The Assistant Secretary considers the need for the proposed project. In determining the need for the proposed project, the Assistant Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals (i.e., eligible migratory agricultural or fishing families).

(3) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: Applicants are free to address criterion (b) in any way that they wish. However, given the purpose of the MEES program, the Assistant Secretary believes that high-quality applications will likely include a discussion of the following key elements:

(i) Whether the project would be located in an area or areas with high percentages or large numbers of migratory children and their parents, guardians, or primary caretakers in need of MEES services.

(ii) How the project will address the lack of existing comprehensive family literacy services for the migrant population.

(iii) How community resources will be used to benefit project participants both during the participants' period of eligibility for migrant education services and in the event that participating families lose their eligibility for MEES services during the project period.

(iv) How the project will integrate age-appropriate early childhood education, adult literacy, parenting education activities, and interactive parent/child literacy activities.

(v) How the project will assist migratory children and adults to achieve the State content standards and student academic achievement standards.

Some migratory families may settle in a community during their enrollment, and thereafter, cease to be eligible. The Assistant Secretary believes that high-quality applications will likely include a plan for ensuring that these families have ongoing access to family literacy services when their enrollment can no longer be supported with basic MEP or MEES program funds. In this regard, an applicant might, for example, describe how the project will fill any gaps in services, or how it will connect families with existing resources or services if they settle in the community.

(c) *Quality of the project design.* (20 points) The Assistant Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Assistant Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(Note: Applicants are free to address criterion (c) in any way that they wish. However, the Assistant Secretary believes that, in designing their project, high-quality applications likely will address each of the required program elements in ESEA section 1235, and listed in the Program Requirements section of this notice. In this regard, the Assistant Secretary believes that a high-quality application likely would explain how its proposed design addresses each one of those requirements in order to meet the needs of the migratory families whom the project will serve.

For example, given the mobility of these families, the Assistant Secretary believes that high-quality applications will likely include strategies for maintaining family education services to migratory families after they have moved from the local community.

In addressing requirement number 8, that projects conduct family literacy services year-round, the Assistant Secretary acknowledges that migratory families may reside in communities for varying lengths of time. Therefore, the Assistant Secretary interprets that requirement to mean that grantees must provide project activities not only during the period in which participating migratory families reside in the project area but also at times when families travel or work outside the local community. The Assistant Secretary strongly encourages applicants to explore ways to maintain contact and continue to monitor the progress of highly mobile families whether or not they are resident in the applicant's community.

Examples of strategies that address this requirement for year-round operations and ongoing family participation include distance learning; capacity building and partnership efforts with sending and receiving States and school districts; self-paced learning packages; and other materials, technologies, and activities that make year-round literacy services viable and family-friendly for migrant workers.)

(d) *Quality of project services.* (15 points) The Assistant Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Assistant Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Assistant Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from scientifically based research and effective practice.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(3) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Quality of Project Personnel.* (10 points) The Assistant Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Assistant Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Assistant Secretary considers the qualifications, including relevant training and experience of key project personnel.

(Note: Applicants may answer criterion (e) in any way that seems reasonable. The Assistant Secretary believes that high quality applications will, at a minimum, address how projects will meet staffing, certification, training, and professional development requirements under ESEA section 1235(b)(5), and described in the PROGRAM REQUIREMENTS section of this notice.)

(f) *Adequacy of resources.* (15 points) The Assistant Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Assistant Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the

proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(4) The extent to which costs are reasonable in relation to the number of persons to be served and the anticipated results and benefits.

(g) *Quality of the project evaluation.* (20 points) The Assistant Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Assistant Secretary considers the following factors:

(1) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(4) The extent to which methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(5) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: Applicants are free to address criterion (g) in any way they wish. However, ESEA section 1235(10), requires applicants to conduct an independent evaluation of their project. In addition, they must participate in the national Even Start data collection effort. Given these two requirements, the Assistant Secretary believes that high-quality applications are likely to address this criterion by explaining how the project will conduct an ongoing, independent, local evaluation to ensure that the quality of the proposed family literacy services is validated and improved over the course of the four-year project period.

In addition, the Assistant Secretary believes that high-quality applicants would likely bear in mind the following information in considering how they intend to report the effectiveness of their project. Funded projects are required to complete an annual performance report on their progress in meeting the approved objectives of their grant to ensure continued funding. These reports and other evaluation information provide local projects, the Department, and the Congress with objective data about the activities and services provided by the project, the participants served, the retention rates of those participants, and the success of the families in the project.

The Department has also developed a set of performance indicators for the Even Start Family Literacy Program in accordance with the Government Performance and Results Act (GPRA) that relate to participant outcomes and project management. The Department uses these indicators in reporting to the Congress on the overall effectiveness of the program. The Assistant Secretary will provide Migrant Education Even Start grantees with these indicators and technical assistance for responding to them.

The following items are not part of the program's selection criteria, but provide additional information for applicants.

National Evaluation

The Department is conducting a national evaluation of Even Start Family Literacy projects. MEES program grantees must cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the national evaluation (as well as with the grantee's responsibilities under ESEA section 1235(10) and 34 CFR 74.51, 75.118, 75.253, and 80.40).

The Assistant Secretary suggests that projects designate appropriate funds for conducting their independent local evaluation, as well as resources to coordinate submissions of their local evaluation with annual performance reports. The Assistant Secretary also recommends that applicants budget for the cost of travel to Washington, DC and four nights' lodging for the project director, instructional services coordinator, and project evaluator, for their participation in annual technical assistance/evaluation meetings. The budget should also include a staff travel plan for training and professional development in the family literacy construct.

Information by project and budget periods. Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period, and provide budgetary information for each budget period of that proposed project period. The Assistant Secretary requires that the budgetary information include an amount for all key project components with an accompanying breakdown of any subcomponents, along with a written justification for all requested amounts. (A form for reporting this information is contained in the appendix of this notice.)

Section 75.112(b) also requires that an applicant describe how and when, in each budget period of the project, it plans to meet each objective of the project.

Note: The Department will use this information, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether a continuation award for the subsequent budget year should be made. Under 34 CFR 75.253, a grantee can receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.

As indicated in the Note to the selection criterion (g) (Quality of project evaluation), each project must conduct an independent local evaluation. In budgeting for the cost of this independent local evaluation, you may wish to contact potential local evaluators, such as researchers or teachers at local community colleges or universities, to ascertain a typical hourly rate.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. You may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the

following address: The Assistant Secretary, E.O. 12372—CFDA# 84.214A, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) and instructions. Novice applicants identify themselves in item number six (6) on the form.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

For Further Information Contact: DonnaMarie Marlow, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E313, Washington, DC 20202–6135. Telephone: (202) 260–1164. The program contact may also be reached via e-mail at *donnamarie.marlow@ed.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmittal of Applications

An application for an award may be submitted by regular mail, or hand delivery.

(a) If an applicant wants to apply for a grant, an applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA #84.214A) Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.214A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Assistant Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Assistant Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(1) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

(4) Guidelines provided for hand delivered applications are applicable to applications delivered by express delivery services. There is a 4:30 p.m. (Washington, D.C. time) deadline for receipt of express delivery services.

(5) Items mailed through the U.S. Post Office to the U.S. Department of Education is subject to rerouting and special processing at other U.S. postal facilities. These special circumstances have and can delay the mail for up to two months. It is recommended that applicants use electronic or express delivery services for the transmission of their applications to ensure timely delivery and processing.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at either of the following site: *www.ed.gov/legislation/FedRegister/*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 6381(a)(1)(a).

Dated: May 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Assistant Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package.

(*Note:* While applicants can address the criteria in any way that is reasonable, given the required emphasis of any MEES project on an integrated program of early childhood education, adult literacy or adult basic education, and parenting education, the Assistant Secretary believes that a reasonable plan of operation would likely address how the proposed project will provide high-quality instruction in these three areas that, with interactive literacy activities between parents and children (PACT), is integrated into a unified family literacy program. Moreover, consistent with 34 CFR 75.112(b), which requires that the application describe how and when, in each budget period, the applicant plans to meet each project objective, the Assistant Secretary believes that applicants would want particularly to describe each goal in terms of measurable objectives, specific activities that are proposed to meet each objective, time lines associated with these activities, the resources believed to be needed to achieve each objective, and how each objective will be evaluated.)

3. Provide the following information in response to the attached ''NOTICE TO ALL APPLICANTS'': (1) a reference to the portion of the application in which the applicant has described the steps that the applicant proposes to take to remove barriers to equitable access to, and equitable participation in, project activities; or (2) a separate statement that includes this information.

4. Include any other pertinent information that might assist the Assistant Secretary in reviewing the application.

Page Limit: The application narrative (Part III of the application) is where the applicant addresses the selection criteria reviewers use to evaluate your application. The recommended page limit for this application is 50 pages (appendices excepted), using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Instruction for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810–0541. (Expiration date: 04/30/2003). The time required to complete this information collection is estimated to average 60 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: US Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Migrant Education, US Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6135.

(Information collection approved under OMB control number 1810—0541. Expiration date: 04/30/2003)

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 84
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)
b. Title
c. Tel. #: _____ Fax #: _____
d. E-Mail Address:
e. Signature of Authorized Representative | Date:

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

[FR Doc. 02–12620 Filed 5–17–02; 8:45 am]
BILLING CODE 4000–01–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 8, 2002.
FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002:

Bollinger, Butler, Carter, Howell and Madison Counties for Individual Assistance (already designated for Public Assistance).

Cape Girardeau, Douglas, Dunklin, Iron, Oregon, Ozark, Perry, Reynolds, Ripley, Shannon, St. Francois, Stoddard, Texas and Wayne Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 02–12538 Filed 5–17–02; 8:45 am]
BILLING CODE 6718–02–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, June 6, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update on Rocky Flats issues, provided by a representative from the U.S. Environmental Protection Agency.
2. Discussion with DOE representatives and regulators on Rocky Flats end-state issues.
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on May 15, 2002.
Rachel M. Samuel,
Deputy Committee Management Officer.
[FR Doc. 02–12550 Filed 5–17–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–339–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

May 14, 2002.

Take notice that on May 1, 2002, Transcontinental Gas Pipe Line Corporation (Transco) submitted a motion for extension of time to comply with Order No. 587–N, until the date Transco implements its new business system, 1Line.

Transco states that the basis for the extension of time is related to its ongoing efforts to develop its new business system, 1Line and, in the interim, to avoid the allocation of substantial resources necessary to modify its existing system to comply with the Commission's directives. Transco requests an extension of time to comply with the first phase of the intraday recall requirement in Order No. 587–N until the implementation of 1Line on April 1, 2003. Transco contends that it is unable to modify its existing business systems to comply with the Commission's intraday recall provisions by July 1, 2002. Transco further asserts that it cannot manually comply with Order No. 587–N. Since Transco is in the process of developing a new business system 1Line, it requests an extension of time to comply with the first phase of Order No. 587–N until its new business system is implemented. Transco asserts that it anticipates 1Line will be implemented by April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before May 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12525 Filed 5–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–68–000, et al.]

Progress Ventures, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Progress Ventures, Inc., Progress, GenCo Ventures, LLC, Washington, County Power, LLC and Walton, County Power, LLC

[Docket No. EC02–68–000]

Take notice that on May 8, 2002, Progress Ventures, Inc. (Progress Ventures), Progress GenCo Ventures, LLC (Progress GenCo), Washington County Power, LLC (Washington) and Walton County Power, LLC (Walton) (collectively, Applicants), tendered for filing pursuant to Section 203 of the Federal Power Act and Part 33 of the Federal Energy Regulatory Commission's (Commission) regulations, a request for authorization and approval to engage in an internal restructuring whereby Progress Ventures transfers to Progress GenCo all of Progress Ventures' membership interest Washington and Walton.

Copies of the filing were served on the North Carolina Public Utilities Commission and the Georgia Public Service Commission.

Comment Date: June 3, 2002.

2. Duke Energy Moapa, LLC

[Docket No. EG02–134–000]

On May 8, 2002, Duke Energy Moapa, LLC (Duke Moapa) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Moapa is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clark County, Nevada. The eligible facilities will consist of an approximately 1,200 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: June 3, 2002.

3. Duke Electric Transmission

[Docket No. ER02–1745–000]

Take notice that on May 6, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Select Energy, Inc., for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on April 26, 2002. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations.

A copy has been served on the North Carolina Utilities Commission.

Comment Date: May 28, 2002.

4. Duke Electric Transmission

[Docket No. ER02–1746–000]

Take notice that on May 6, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Select Energy, Inc., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on April 25, 2002. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations.

A copy has been served on the North Carolina Utilities Commission.

Comment Date: May 28, 2002.

5. Xcel Energy Services, Inc.

[Docket No. ER02–1750–000]

Take notice that on May 7, 2002 Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing a First Amendment to the Interconnection Agreement between SPS and West Texas Municipal Power Agency (WTMPA).

XES requests that this agreement become effective on July 8, 2002.

Comment Date: May 28, 2002.

6. Southern Company Services, Inc.

[Docket No. ER02–1751–000]

Take notice that on May 7, 2002, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (''Southern Companies'') tendered for filing the Generator Balancing Service Agreement by and between Williams Energy Marketing & Trading Company (''Williams'') and Southern Companies (the ''Service Agreement'') under Southern Companies'' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9). The Service Agreement supplies Williams with unscheduled energy in connection with sales from Tenaska Alabama Partners, L.P.''s electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 7) is dated as of May 1, 2002, and shall terminate upon twelve months prior written notice of either party.

Comment Date: May 28, 2002.

7. Southern Company Services, Inc.

[Docket No. ER02–1752–000]

Take notice that on May 7, 2002, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Balancing Service Agreement by and between Duke Energy Trading and Marketing, LLC (Duke Energy) and Southern Companies (the ''Service Agreement'') under Southern Companies'' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9). The Service Agreement supplies Duke Energy with unscheduled energy in connection with sales from Duke Energy Enterprise, LLC's electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 8) is dated as of May 2, 2002, and shall terminate upon twelve months prior written notice of either party.

Comment Date: May 28, 2002.

8. Wisconsin Public Service Corporation

[Docket No. ER02–1753–000]

Take notice that on May 7, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Upper Peninsula Power Company (UPPCO). Second Revised Service Agreement No. 11 provides UPPCO's contract demand nominations for January 2003—December 2003, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon UPPCO and to the State Commissions where WPSC serves at retail.

Comment Date: May 28, 2002.

9. West Texas Utilities Company

[Docket No. ER02–1754–000]

Take notice that on May 7, 2002, West Texas Utilities Company (WTU) submitted for filing the Interconnection Agreement, dated January 1, 2000, between WTU and Coleman County Electric Cooperative, Inc. (Coleman) amended to include an additional point of interconnection to be established between the parties near Coleman's two new substations that will serve water pumping load near Lake Ivie in west Texas.

WTU seeks an effective date of August 1, 2002 for this point of interconnection.

WTU served copies of the filing on Coleman and the Public Utility Commission of Texas.

Comment Date: May 28, 2002.

10. New England Power Pool

[Docket No. ER02–1755–000]

Take notice that on May 7, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include the Robert E. McLaughlin Trust (Trust). The Participants Committee requests a May 7, 2002 effective date for the commencement of participation in NEPOOL by the Trust.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: May 28, 2002.

11. American Transmission Company LLC

[Docket No. ER02–1757–000]

Take notice that on May 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Riverside Energy Center, LLC. ATCLLC requests an effective date of April 7, 2002.

Comment Date: May 28, 2002.

12. California Independent System Operator Corporation

[Docket No. ER02–1758–000]

Take notice that on May 7, 2002, the California Independent System Operator Corporation (ISO) filed First Revised Service Agreement No. 239 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement between the ISO and Green Power Partners I LLC (Green Power Partners). The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests an effective date for the filing of February 21, 2002.

The ISO has served copies of this filing upon Green Power Partners and all entities that are on the official service list for Docket No. ER99–3254–000.

Comment Date: May 28, 2002.

13. Dominion Energy Marketing, Inc.

[Docket No. ER02–1759–000]

Take notice that on May 7, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the following:

Service Agreement by Dominion Energy Marketing, Inc. to FirstEnergy Solutions Corp. designated as Service Agreement No 1 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000. The Company requests an effective date of April 8, 2002, as requested by the customer.

Copies of the filing were served upon the FirstEnergy Solutions Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: May 28, 2002.

14. Consumers Energy Company

[Docket No. ER02–1760–000]

Take notice that on May 7, 2002 Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Northern States Power Company (Customer) under Consumers' FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of May 3, 2002.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment Date: May 28, 2002.

15. Arizona Public Service Company

[Docket No ER02–1761–000]

Take notice that on May 7, 2002, Arizona Public Service Company (APS) filed the following with the Federal Energy Regulatory Commission: (1) Amended Lease Power Agreement between APS and ED–3, APS FERC First Revised Rate Schedule No. 12, to be effective as of March 1, 2002; (2) Amended Lease Power Agreement between APS and ED–1, APS FERC First Revised Rate Schedule No. 68, to be effective as of March 1, 2002; (3) Notice of Cancellation of Amended Lease Power Agreement between APS and ED–3, APS FERC First Revised Rate Schedule No. 12, to be effective upon sale of Sexton Substation by PWCC to ED–3; (4) Notice of Cancellation of Amended Lease Power Agreement between APS and ED–1, APS FERC First Revised Rate Schedule No. 68, to be effective upon sale of Sexton Substation by PWCC to ED–3; (5) Notice of Cancellation of Lease Agreement between APS and ED–1, pages 31 through 59 of APS FERC Rate Schedule No. 68, to be effective as of March 31, 2002; (6) Notice of Cancellation of Banking Agreement between APS and ED–3, APS Rate Schedule No. 106, to be effective upon sale of Sexton Substation by PWCC to ED–3; and (7) Notice of Cancellation of Banking Agreement between APS and ED–1, APS Rate Schedule No. 117, to be effective upon sale of Sexton Substation by PWCC to ED–3.

Comment Date: May 28, 2002.

16. Reliant Energy Solutions East, LLC

[Docket No. ER02–1762–000]

Take notice that on May 7, 2002, Reliant Energy Solutions East, LLC (RESE) petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting RESE's FERC Electric Rate Schedule No. 1. RESE intends to engage in power marketing transactions, purchasing and reselling electricity and offering electric generation services including services designed to facilitate power trading, such as brokering of electricity, engaging in risk management transactions or arranging or providing related services. RESE does not own or control electric generating or transmission facilities or have any franchised electric service territories. RESE is a wholly owned subsidiary of Reliant Energy Retail Holdings, LLC that is in turn a wholly owned subsidiary of Reliant Resources, Inc. which is a

wholly owned subsidiary of Reliant Energy, Incorporated.

Comment Date: May 28, 2002.

17. Holland Energy, LLC

[Docket No. ER02–1763–000]

Take notice that on May 7, 2002, Holland Energy, LLC (Holland) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed service agreement with Ameren Services Company designated as Service Agreement No. 1. under Holland's FERC Electric Tariff, Original Volume No. 1.

Holland respectfully requests an effective date of March 29, 2002.

Comment Date: May 28, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12522 Filed 5–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–14–005, et al.]

Southwest Electric Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southwestern Electric Cooperative, Inc., Complainant, v. Soyland Power Cooperative, Inc., Respondent.

[Docket No. EL99–14–005]

Take notice that on May 2, 2002, Soyland Power Cooperative, Inc. tendered for filing a Compliance Filing in accordance with the orders issued in the above-captioned docket. *See Southwestern Electric Cooperative, Inc.* v. *Soyland Power Cooperative, Inc.,* 90 FERC ¶ 63,001 (2000), 95 FERC ¶ 61,254 (2001), 97 FERC ¶ 61,008 (2001), and 99 FERC ¶ 61,001 (2002).

Comment Date: June 3, 2002.

2. Hardee Power Partners Limited

[Docket No. ER99–2341–001]

Take notice that on May 6, 2002, Hardee Power Partners Limited (HPP) tendered for filing an updated market power analysis in accordance with Commission policies applicable to public utilities that are authorized to sell electric power at market-based rates. A copy of the filing has been served on the Florida Public Service Commission.

Comment Date: May 28, 2002.

3. Tampa Electric Company

[Docket No. ER99–2342–001]

Take notice that on May 6, 2002, Tampa Electric Company (Tampa Electric) tendered for filing an updated market power analysis in accordance with Commission policies applicable to public utilities that are authorized to sell electric power at market-based rates.

A copy of the filing has been served on each customer under Tampa Electric's market-based sales tariffs and the Florida Public Service Commission.

Comment Date: May 28, 2002.

4. Portland General Electric Company

[Docket No. ER02–338–003]

Take notice that on May 6, 2002, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission (Commission) corrections to PGE's revised Energy Imbalance Service tariff sheets of its Open Access Transmission Tariff in compliance with the Commission's March 15, 2002 letter order in the above-referenced proceeding.

PGE requests that the Commission make the amended tariff sheets effective as of March 1, 2002.

Comment Date: May 28, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1726–000]

Take notice that on May 6, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing (1) an amended Rock Springs Generating Facility interconnection service agreement to interconnect a 930 MW generating facility located in Rock Springs, Maryland to the PJM system, designated as First Revised Service Agreement No. 610 (Rock Springs ISA) between PJM and the owners of the Rock Springs Generating Facility, and (2) an executed Agreement On Operation of Certain Electric Transmission Facilities among PJM Interconnection L.L.C., Rock Springs Generation, L.L.C. and CED Rock Springs, Inc, (Facilities Operation Agreement), designated as Rate Schedule FERC No. 34. PJM states that the amendment to the Rock Springs ISA modifies the Rock Springs ISA to incorporate all the current owners of the Rock Springs Generating Facility as signatories to the Rock Springs ISA, which the Commission accepted for filing on October 24, 2001, effective May 18, 2001.

PJM Interconnection, L.L.C., 97 FERC § 61,068 (2001). PJM states that the Facilities Operation Agreement transfers to PJM operational control of certain electric transmission facilities that are now under construction in association with the Rock Springs Generating Facility. PJM requests an effective date of April 29, 2002, for the Facilities Operation Agreement.

Copies of this filing were served upon the official service list of Docket No. ER01–3014–000, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: May 28, 2002.

6. Otter Tail Power Company

[Docket No. ER02–1727–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an executed service agreement with Northern States Power Company, d/b/a Xcel Energy (NSP), for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of NSP and other affected parties.

Comment Date: May 28, 2002.

7. Otter Tail Power Company

[Docket No. ER02–1728–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted Service Agreement with East Grand Forks Water and Light Department (East Grand Forks) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of East Grand Forks and other affected parties.

Comment Date: May 28, 2002.

8. Otter Tail Power Company

[Docket No. ER02–1729–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted service agreement with Minnkota Power Cooperative, Inc. (MPC) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of MPC and other affected parties.

Comment Date: May 28, 2002.

9. Otter Tail Power Company

[Docket No. ER02–1730–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted service agreement with Missouri River Energy Services (MRES) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of MRES and other affected parties.

Comment Date: May 28, 2002.

10. Otter Tail Power Company

[Docket No. ER02–1731–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted service agreement with East River Electric Power Cooperative, Inc. (EREPC) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of EREPC and other affected parties.

Comment Date: May 28, 2002.

11. Otter Tail Power Company

[Docket No. ER02–1732–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted service agreement with Great River Energy (GRE) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of GRE and other affected parties.

Comment Date: May 28, 2002.

12. Otter Tail Power Company

[Docket No. ER02–1733–000]

Take notice that on May 6, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an unexecuted service agreement with Central Power Electric Cooperative (CPEC) for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of April 6, 2002 for this service agreement.

A copy of the filing was served on representatives of CPEC and other affected parties.

Comment Date: May 28, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1734–000]

Take notice that on May 6, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreement for the transmission service requested by California Electric Marketing, LLC.

A copy of this filing was sent to California Electric Marketing, LLC.

Comment Date: May 28, 2002.

14. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1735–000]

Take notice that on May 6, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Service Agreements for the transmission service requested by The Empire District Electric Company.

A copy of this filing was sent to The Empire District Electric Company.

Comment Date: May 28, 2002.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1736–000]

Take notice that on May 6, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Service Agreements for the transmission service requested by RWE Trading Americas, Inc.

A copy of this filing was sent to RWE Trading Americas, Inc.

Comment Date: May 28, 2002.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1737–000]

Take notice that on May 6, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Service Agreements for the transmission service requested by Sikeston Board of Municipal Utilities.

A copy of this filing was sent to Sikeston Board of Municipal Utilities.

Comment Date: May 28, 2002.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1738–000]

Take notice that on May 6, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by UBS AG, London Branch.

A copy of this filing was sent to UBS AG, London Branch.

Comment Date: May 28, 2002.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1739–000]

Take notice that on May 6, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Service Agreements for the transmission service requested by Virginia Electric and Power Company.

A copy of this filing was sent to Virginia Electric and Power Company.

Comment Date: May 28, 2002.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1740–000]

Take notice that on May 6, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Western Resources, Inc. dba Westar Energy.

A copy of this filing was sent to Western Resources, Inc. dba Westar Energy.

Comment Date: May 28, 2002.

20. Nevada Power Company

[Docket No. ER02–1741–000]

Take notice that on May 6, 2002, Nevada Power Company tendered for filing four executed second Letters of Understanding between Nevada Power Company and the following generators: (1) Las Vegas Cogeneration II; (2) Mirant Las Vegas, LLC; (3) Duke Energy Moapa, LLC; and (4) Reliant Energy Bighorn, LLC. The Letters of Understanding are submitted as Service Agreement Nos. 119 through 122, respectively, to Nevada Power's Open Access Transmission Tariff. Nevada Power requests that the Letters of Understanding be made effective as of the execution date of each agreement.

Comment Date: May 28, 2002.

21. Nevada Power Company

[Docket No. ER02–1742–000]

Take notice that on May 6, 2002, Nevada Power Company tendered for filing five Memoranda of Understanding between Nevada Power Company and the following five generators: (1) Las Vegas Cogeneration II, LLC; (2) Duke Energy Moapa, LLC; (3) Mirant Las Vegas, LLC; (4) Reliant Energy Bighorn, LLC; and (5) GenWest, LLC. The MOUs are submitted as Service Agreement Nos. 123 through 127, respectively, to Nevada Power's Open Access Transmission Tariff. Nevada Power requests that the Memoranda of Understanding be made effective on the filing date of each agreement, or May 6, 2002.

Comment Date: May 28, 2002.

22. Avista Corp.

[Docket No. ER02–1743–000]

Take notice that on May 6, 2002, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with FPL Energy Power Marketing. AVA requests the Service Agreements be given an effective date of April 1, 2002.

Comment Date: May 28, 2002.

23. Northwestern Wisconsin Electric Company

[Docket No. ER02–1744–000]

Take notice that Northwestern Wisconsin Electric Company, on May 2, 2002, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would decrease revenues from jurisdictional sales by $1,422.07 based on the 12 month period ending April 30, 2002. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 2002.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment Date: May 28, 2002.

24. PPL Shoreham Energy, LLC

[Docket No. ER02–1747–000]

On May 6, 2002, PPL Shoreham Energy, LLC filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: May 28, 2002.

25. Southwest Power Pool, Inc.

[ER02–1748–000]

Take notice that on May 6, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing a filing three revised service agreements for Firm Point-to-Point Transmission Service with Southwest Public Service Company d.b.a. Xcel Energy (Transmission Customer). SPP seeks an effective date of April 26, 2002 for these service agreements.

The Transmission Customer was served with a copy of this filing.

Comment Date: May 28, 2002.

26. PPL Edgewood Energy, LLC

[Docket No. ER02–1749–000]

On May 6, 2002, PPL Edgewood Energy, LLC filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: May 28, 2002.

27. Boston Edison Company

[Docket No. ES02–33–000]

Take notice that on April 30, 2002, Boston Edison Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $350 million during a two-year period.

Comment Date: May 24, 2002.

28. Cambridge Electric Light Company

[Docket No. ES02–34–000]

Take notice that on April 30, 2002, Cambridge Electric Light Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $60 million during a two-year period.

Comment Date: May 24, 2002.

29. Commonwealth Electric Company

[Docket No. ES02–35–000]

Take notice that on April 30, 2002, Commonwealth Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not exceeding $125 million during a two year period.

Comment Date: May 24, 2002.

30. Consumers Energy Company

[Docket No. ES02–36–000]

Take notice that on May 2, 2002, Consumers Energy Company (Consumers) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to $2.7 billion of long-term securities, including but not limited to, term loans, first mortgage bonds, stocks, preferred securities and notes.

Consumers also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 31, 2002.

31. Consumers Energy Company

[Docket No. ES02–37–000]

Take notice that on May 2, 2002, Consumers Energy Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term securities in an amount not to exceed $1.1 billion at any one time.

Comment Date: May 31, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12523 Filed 5–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM981000]

Regulations Governing Off-the-Record Communications; Public Notice

May 14, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of these filings are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date Filed	Presenter or requester
1. CP01–438–000	4–11–02	Paul Friedman.
2. Project No. P–1494–232.	5–8–02	Edward B. Lienbach.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12524 Filed 5–17–02; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7214–2]

Announcement of a Stakeholder Meeting on the Six-Year Review of Existing National Primary Drinking Water Regulations, as Required by the Safe Drinking Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of a stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a public meeting to discuss the results of the Agency's preliminary findings in the review of 69 pre-1997 National Primary Drinking Water Regulations (NPDWRs). The **Federal Register** notice that announced the preliminary results of the review of NPDWRs (i.e., the Six-Year Review) was published by EPA on April 17, 2002.

The purpose of this meeting is to provide information to stakeholders and the public on the Six-Year Review of NPDWRs.

DATES: The stakeholder meeting will be held from 9 a.m. to 5:15 p.m. on May 30.

ADDRESSES: The meeting will be at the Washington Plaza Hotel, phone (202)842–1300, or (800)424–1140, located at 10 Thomas Circle, NW (corner of M and 14th Streets) in downtown Washington, DC. The hotel is a short distance from both the McPherson Square Metro Station (Orange and Blue Lines) and Farragut North Metro Station (Red Line).

FOR FURTHER INFORMATION CONTACT: For technical inquiries regarding the Six-Year Review of NPDWRs contact: Ms. Judy Lebowich, (202) 564–4884, e-mail: *lebowich.judy@epa.gov;* or Ms. Wynne Miller, (202) 564–4887, e-mail: *miller.wynne@epa.gov.* For registration and general information about this meeting, please contact Ms. Paula Moreno at RESOLVE, Inc., 1255 23rd Street, NW., Suite 275, Washington, DC. 20037, by phone: (202) 965–6218; by fax: (202)338–1264, or by e-mail at *pmoreno@resolv.org.* Those registered by May 22nd will receive background materials prior to the meeting. Additional information on these and other EPA activities under SDWA is available at the Safe Drinking Water Hotline at (800)426–4791.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to review each national primary drinking water regulation (NPDWR) at least once every six years and revise any NPDWR

as appropriate. SDWA specifies that any revision must maintain or increase public health protection. EPA developed a systematic approach, or protocol, for the review of NPDWRs in consultation with stakeholders. EPA has applied this protocol to the Agency's initial Six-Year Review of most of the NPDWRs published prior to the 1996 SDWA Amendments (i.e., pre-1997 NPDWRs). The review focused on 68 chemical NPDWRs and the Total Coliform Rule (TCR). The meeting will provide stakeholders information on EPA's protocol for the review of these 69 NPDWRs and EPA's preliminary revise/not revise decisions for these 69 NPDWRs. Comments on the Six-Year Review of NPDWRs must be submitted in writing to the Agency's Water Docket by June 17, 2002.

There will be a limited number of teleconference lines available for those who are unable to attend in person. Information about how to access these lines will accompany the pre-meeting materials to be mailed out to those who register, and also will be available prior to the day of this meeting through the previously-noted point of contact at RESOLVE, Inc.

Any person needing special accommodations at this meeting, including wheelchair access, should contact the same previously-noted point of contact at RESOLVE, Inc., at least five business days before the meeting so that the Agency can make appropriate arrangements.

Registration for this meeting will occur from 8:45 a.m. to 9 a.m.

Dated: May 15, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–12685 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7213–3]

General Administrative Compliance Order Issued Under Section 309 of the CWA to Permittees Covered by the NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of general administrative compliance order.

SUMMARY: Region 6 of the Environmental Protection Agency (EPA) today issues a general administrative compliance order applicable to those dischargers affected by EPA's recent modification to the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000) for discharges from new sources, existing sources and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category, which was published on December 18, 2001 (''the offshore general permit'' or ''the permit''). The general administrative compliance order requires those dischargers who cannot comply with the modified permit's limits for discharges of drill cuttings generated using synthetic and other non-aqueous based drilling fluids to achieve compliance no later than August 16, 2002, with all limitations except the four-day sediment toxicity limit. Permittees must achieve compliance with the limitation for four-day sediment toxicity no later than February 1, 2003.

ADDRESSES: Mr. Taylor Sharpe, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202, Telephone: (214) 665–7112, or via EMAIL at the following address: *sharpe.taylor@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Taylor Sharpe at (214) 665–7112.

SUPPLEMENTARY INFORMATION: As published on December 18, 2001 (66 FR 65209), EPA modified the offshore general permit, which was originally published November 2, 1998 (63 FR 58722) and modified April 19, 1999 (64 FR 19156), to address certain discharges and uses of non-aqueous based (synthetic) drilling fluids. The December 18, 2001 (66 FR 65209), modification will become effective on February 16, 2002, and can be found on the Internet at *http://www.epa.gov/region6/6wq/npdes/genpermt/offshore/fr__not.pdf.*

EPA received several comments on the draft permit, published on June 4, 2001 (66 FR 29948), requesting additional time for compliance with the permit modification. EPA is aware that this permit modification may cause many permittees to add and/or modify existing pollution control equipment in order to obtain compliance with the modified permit. Upon review of the probable process modifications necessary for compliance, EPA has agreed that a reasonable schedule for compliance may be issued for facilities that become aware of a violation, report it to EPA, and request an administrative compliance order within thirty (30) days of becoming aware of the violation. Compliance Order Notices for all violations except violations of the four-day sediment toxicity limitation, must be postmarked before August 16, 2002. Compliance Order Notices for violations of the four-day sediment toxicity limitation must be postmarked before February 1, 2003. The compliance order will provide until August 16, 2002, for permittees to make any necessary pollution control changes for all discharges to come into compliance with the new permit modifications for all new limitations except the four-day sediment toxicity limit. Permittees will be given until February 1, 2003, to make any necessary pollution control changes for all discharges to come into compliance with the new limitation for four-day sediment toxicity.

It is the policy of EPA to achieve full compliance with the NPDES permit program as rapidly as possible. If you have any questions regarding the applicability of this action to a particular entity, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. An ''Information Sheet'' relating to the Small Business Regulatory Enforcement Fairness Act (SBREFA) may pertain to you and you may find this ''Information Sheet'' on the Internet at <*http://es.epa.gov/oeca/ccsmd/sbrefa.pdf*>. You may be subject to providing a ''Notice of Registrants Duty to Disclose'' relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission (SEC). This SEC notice may be found on the Internet at <*http://www.epa.gov/earth1r6/6en/w/sec.pdf*>. You can find out more information regarding your NPDES Offshore program on the Internet at: *http://www.epa.gov/region6/offshore.*

United States Environmental Protection Agency, Region 6

In Re: NPDES PERMIT NO. GMG290000

General Administrative Compliance Order

The following Findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by sections 308(a) and 309(a) of the Clean Water Act (''the Act''), 33 U.S.C. 1318(a) and 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division. Issuance of this order is not ''final agency action'' and is subject to

judicial review only in connection with an action to enforce its terms.

Findings

1. Section 402(a) of the Act, 33 U.S.C. 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (NPDES) program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

2. Pursuant to section 402(a) of the Act, EPA issued the ''Final NPDES General Permit for New and Existing Sources and New Discharges in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico,'' 63 FR 58722 (November 2, 1998) (GMG290000), which was modified April 19, 1999 (64 FR 19156), and December 18, 2001 (66 FR 65209). The general permit authorizes discharges from new sources, existing sources, and new discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) to operators of lease blocks in the Oil and Gas Extraction Point Source Category which are located in Federal waters of the Western Portion of the Gulf of Mexico (defined as seaward of the outer boundary of the territorial seas off Louisiana and Texas) to the Western Portion of the Federal Waters of the Gulf of Mexico (''the industry''), but only in accordance with the conditions of the permit. The permit does not authorize discharges from facilities located in or discharging to the territorial seas of Louisiana or Texas or from facilities defined as ''coastal,'' ''onshore,'' or ''stripper'' (see 40 CFR part 435, subparts C, E, and E). The permit does, however, authorize the discharge of produced water to the Western portion of the Federal Waters of the Gulf of Mexico from wells located in lease blocks in the territorial seas of Louisiana and Texas.

3. As published on December 18, 2001 (66 FR 65209), EPA Region 6 again modified the permit to allow for discharges of drill cuttings generated using synthetic and other non-aqueous based drilling fluids and hydrostatic test water from pressure testing of existing pipelines. These permit modifications, effective February 16, 2002, impose new discharge limitations and standards for non-aqueous drilling fluids as specified below. Any further reference to ''the permit'' in this Order shall refer to the modified permit published on December 18, 2001 (66 FR 65209).

Limitations and Monitoring Requirements Which Apply to Drill Cuttings Generated Using Non-Aqueous Based Drilling Fluids

A. Stock Limitations

The permittee shall analyze a representative sample of the stock base fluids at the frequencies listed below. The test results shall be reported on the Discharge Monitoring Report.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the stock base fluid being used on the well will meet the limits listed below.

Polynuclear Aromatic Hydrocarbons (PAH). The mass ratio in grams of PAH (as phenanthrene) divided by the mass in grams of base fluids shall not exceed 0.00001. Monitoring shall be performed at least once per year on each base fluid blend. See part I, section D.10. of the permit.

Sediment Toxicity. The ratio of the 10-day LC_{50} of C_{16}–C_{18} internal olefin or C_{12}–C_{14} or C_8 ester reference fluid divided by the 10-day LC_{50} sediment toxicity test with Leptocheirus plumulosus of the base fluid shall not exceed 1.0. Monitoring shall be performed at least once per year on each base fluid blend. See part I, section D.8 of the permit.

Biodegradation Rate. The ratio of the cumulative gas production (ml) of C_{16}–C_{18} internal olefin or C_{12}–C_{14} or C_8 ester reference fluid divided by the cumulative gas production (ml) of stock base fluid, both at 275 days, shall not exceed 1.0. Monitoring shall be performed at least once per year on each base fluid blend. See part I, section D.9. of the permit.

Exception: Until February 1, 2003 a blend of different non-aqueous base fluids may be considered compliant with the biodegradation rate limit if the weighted average of the base fluids' biodegradation rate is greater than that of the C_{16}–C_{18} internal olefin standard tested concurrently.

B. Discharge Limitations

Sediment Toxicity. The ratio of the 4-day LC_{50} of C_{16}–C_{18} internal olefin reference drilling fluid divided by the 4-day LC_{50} of the drilling fluids removed from cuttings at the solids control equipment shall not exceed 1.0. Monitoring shall be performed at least once per month on drilling fluids which meet the stock limitations for a C_{16}–C_{18} internal olefin. The final monthly sample shall be collected at the end of drilling with non-aqueous based drilling fluids. For drilling fluids which meet stock limitations for C_{12}–C_{14} ester or C_8 ester, monitoring shall be performed at least once per well at the end of drilling with non-aqueous based drilling fluids. See appendix A of the permit.

The reference drilling fluid shall be formulated from C_{16}–C_{18} internal olefin and meet the criteria listed in Table 1 of 40 CFR part 435, subpart A, appendix 8. A uniform emulsifier package shall be used for all formulations of reference drilling fluids.

Formation Oil. No discharge. Monitoring shall be performed on the drilling fluid as follows:

(1) Once prior to drilling using the gas chromatography/mass spectrometry test method specified in part I, section D.11. of the permit. The test results shall be reported on the Discharge Monitoring Report (DMR).

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the drilling fluid being used on the well will meet the no discharge limit for formation oil.

(2) Once per week during drilling using the Reverse Phase Extraction test method specified in part I, section D.12. of the permit.

Base Fluids Retained on Cuttings

Monitoring shall be performed at least once per day when generating new cuttings, except when meeting the conditions of the Best Management Practices described below. Operators conducting fast drilling (i.e., greater than 500 linear feet advancement of the drill bit per day using non-aqueous fluids) shall collect and analyze one set of drill cuttings samples per 500 linear feet drilled, with a maximum of three sets per day. Operators shall collect a single discrete drill cuttings sample for each point of discharge to the ocean. The weighted average of the results of all discharge points for each sampling interval will be used to determine compliance. See part I, section D.13. of the permit.

Drilling Fluids which meet stock limitations for C_{16}–C_{18} internal olefin: The end-of-well maximum weighted mass ratio averaged over all well sections drilled using non-aqueous fluids shall not exceed 6.9 grams non-aqueous base fluids per 100 grams of wet drill cuttings.

Drilling fluids which meet stock limitations for C_{12}–C_{14} ester or C_8 ester: The end-of-well maximum weighted mass ratio averaged over all well sections drilled using non-aqueous fluids shall not exceed 9.4 grams non-aqueous base fluids per 100 grams of wet drill cuttings.

See also part I, section B.2.c. of the permit.

4. To maintain oil and gas production and comply with the permit's new

limits established in the permit modifications, Permittees may have to modify process controls to decrease the sediment toxicity, biodegradation, formation oil contamination, PAH content, and retention of drilling fluids on drill cuttings of the discharge. This may include installing new pollution control equipment for compliance with the permit.

5. Permittees may reasonably take all actions necessary to achieve final compliance with the permit's limitations by August 16, 2002, except for the four-day sediment toxicity limit, with which the Permittees may reasonably take all actions necessary to achieve compliance by February 1, 2003. Upon submission of a Compliance Order Notice, permittees shall become Respondents under this administrative compliance order. The EPA will acknowledge receipt of Compliance Order Notices and send confirmation to Respondents.

6. Respondents are ''persons,'' as that term is defined at section 502(5) of the Act, 33 U.S.C. 1362(5), and 40 CFR 122.2.

7. At all relevant times, Respondents owned or operated offshore platforms described in the Compliance Order Notices (herein ''the facilities'') and were therefore ''owners or operators'' within the meaning of 40 CFR 122.2.

8. At all relevant times, the facilities were ''point sources'' subject to a ''discharge'' of ''pollutant[s]'' with its discharges to the receiving waters of the Gulf of Mexico, which are ''waters of the United States'' within the meaning of section 502 of the Act, 33 U.S.C. 1362, and 40 CFR 122.2.

9. Because Respondents owned or operated facilities that were point sources subject to discharges of pollutants to waters of the U.S., Respondents and the facilities were subject to the Act and the NPDES program.

10. Under section 301 of the Act, 33 U.S.C. 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to section 402 of the Act, 33 U.S.C. 1342.

11. Respondents obtained NPDES permit coverage for discharges from new sources, existing sources, and new discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category.

12. Violations are those violations specified by Respondents in the Compliance Order Notices submitted to EPA per instructions in Order Paragraph A below.

13. Each violation of the conditions of the permit is a violation of section 402 of the Act, 33 U.S.C. 1342, or section 301 of the Act, 33 U.S.C. 1311, and may be subject to enforcement as set forth in section 309 of the Act, 33 U.S.C. 1319.

14. Given the large number of persons regulated under the permit, it would be impractical for EPA to issue individual compliance orders to all permit violators or conduct ''show cause'' meetings to establish individual compliance schedules for all such violators. A general compliance order setting forth procedures for establishing such schedules will avoid delays attendant on such meetings and issuance of individual compliance orders.

Order

Based on these Findings and pursuant to the authority of sections 308(a) and 309(a) of the Act, EPA hereby orders Respondents to take the following actions:

A. Any NPDES permittee in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico with coverage under the permit may request coverage under this administrative compliance order by submitting a ''Compliance Order Notice,'' to EPA Region 6. Such Compliance Order Notices must be postmarked before August 16, 2002, and no more than thirty (30) days after becoming aware of a violation, except for violations of the four-day sediment toxicity limit. For violations of the four-day sediment toxicity limit, all Compliance Order Notices must be postmarked before February 1, 2003, and no more than thirty (30) day after becoming aware of a violation. All Compliance Order Notices shall be sent to: Ms. Sharon Haggard, Water Enforcement Branch (6EN–WC), U.S. EPA, Region 6, P.O. Box 50625, Dallas, Texas 75250.

The Compliance Order Notice must be signed and certified by an ''authorized official'' (40 CFR 122.22), and include the following:

i. Identification of the violating facility by name, location and NPDES facility identification number (GMG29####) (by lease block), the legal name and address of its operator, the name and address of an authorized official, as defined at 40 CFR 122.22, and the name, address, and telephone number of a contact person with whom EPA may further discuss the violation.

ii. A brief description of the violation, Respondent's opinion on the cause of the violation, and the basis for that opinion.

iii. A commitment to achieve final compliance with the permit by August 16, 2002, except for the four-day sediment toxicity limit; and a commitment to comply with the four-day sediment toxicity limit by February 1, 2003.

B. By August 16, 2002, Respondents shall complete all necessary pollution control changes for all discharges to come into compliance with the new permit modifications for all new limitations except the four-day sediment toxicity limit. By February 1, 2003, Respondents shall complete all necessary pollution control changes for all discharges to come into compliance with the new limitation for four-day sediment toxicity. This Order covers only those discharges by Respondents that are authorized by the permit published on December 18, 2001 (66 FR 65209) and listed in the Compliance Order Notices described above.

C. Respondents shall report all violations in accordance with permit requirements, including those that result during the period of this administrative compliance order. Part II.D.7. of the permit requires a 24 hour oral report or else a 24 hour e-mail to the following Internet e-mail address: *r6genpermit@epa.gov.* Additionally, part II.D.7 of the permit requires a written submission within 5 days of the time the permittee becomes aware of the circumstances. All reports submitted to the EPA shall be signed by an authorized person in accordance with part II.D.10. of the permit, and shall include the following certification set forth in this part of the permit:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If the report is made by e-mail, the 24 hour report should include this statement and be submitted by an authorized official. Please note that only authorized officials as defined by the permit may sign such documentation unless a delegation of authority letter has been sent to EPA Region 6.

D. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any

other relief appropriate under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

E. Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice. If the United States initiates a civil judicial action, Respondents will be subject to civil penalties of up to $27,500 per day per violation.[1]

F. This Order is not an NPDES permit, and compliance with the terms and conditions of this Order does not relieve Respondents of their obligations to apply for and comply with any applicable permit, and comply with any applicable federal, state or local law or regulation.

G. This Order shall be effective on February 16, 2003.

Tai-Ming Chang,

Acting Director, Compliance Assurance and Enforcement Division.

[FR Doc. 02–12617 Filed 5–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 9, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0954.

Title: Implementation of the 911 Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 800.

Estimated Time Per Response: .50–2 hours (average).

Frequency of Response: Third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 3,100 hours.

Total Annual Cost: N/A.

Needs and Uses: On January 11, 2002, the Commission received emergency OMB approval for information collection burdens contained in rules adopted in a Fifth Report and Order, in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110, and Memorandum Opinion and Order on Reconsideration in both dockets, regarding implementation of the Wireless Communications and Public Safety Act of 1999. The approval expires on June 30, 2002. Therefore, the Commission now resubmits this information collection, with no change, to the Office of Management and Budget for the regular three-year approval. The Commission requires certain carriers to file various transition reports. Those affected carriers are only: (1) Those operating in counties where there is no 911 service; (2) those operating in counties that are in the process of implementing 911; or (3) those operating in counties that have basic 911 service only in some parts as summarized by the National Emergency Number Association (NENA) in its Report Card to the Nation (Congressional Summary, 2001), and more specifically identified in the list NENA has submitted at the Commission's request. In addition, in March 2002, the Commission issued a Public Notice in which it offered a suggested template or sample as an optional guide to completing these reports. The coordination requirements will help to minimize the chances of confusion between all concerned parties and will improve the chances of a smooth, speedy transition to 911 service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12507 Filed 5–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2552]

Petition for Reconsideration of Action in Rulemaking Proceeding

May 9, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by June 4, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 90–66).

Number of Petitions Filed: 1

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12577 Filed 5–17–02; 8:45 am]

BILLING CODE 6712–01–M

[1] The civil penalty amounts that can be assessed under Section 309 of the Clean Water Act were amended by the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 69359, December 31, 1996, as corrected in 62 FR 13514, March 20, 1997), effective June 1, 1997, under the Debt Collections Improvement Act of 1996, 31 U.S.C. 3701, et. seq., for all violations occurring or continuing after January 30, 1997.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1414–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1414–DR), dated May 7, 2002, and related determinations.

EFFECTIVE DATE: May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 7, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, and flooding on April 27, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance and/or Hazard Mitigation is later requested and warranted, Federal funds provided under those programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Breckinridge, Crittenden, Grayson, Hancock, Hardin, Henderson, Hopkins, McLean, Meade, Ohio, Union, and Webster Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–12539 Filed 5–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1414–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1414–DR), dated May 7, 2002, and related determinations.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 7, 2002:

Boyle, Casey, Clay, Floyd, Jackson, Knott, Knox, Larue, Laurel, Letcher, Marion, Martin, McCreary, Nelson, Pike, Pulaski, Rockcastle, Taylor, Washington, and Whitely Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–12540 Filed 5–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1414–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1414-DR), dated May 7, 2002, and related determinations.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 10, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–12541 Filed 5–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 8, 2002.
FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002:

Bollinger, Butler, Carter, Howell and Madison Counties for Individual Assistance (already designated for Public Assistance).

Cape Girardeau, Douglas, Dunklin, Iron, Oregon, Ozark, Perry, Reynolds, Ripley, Shannon, St. Francois, Stoddard, Texas and Wayne Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 02–12539 Filed 5–17–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1408–DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1408–DR), dated April 5, 2002, and related determinations.

EFFECTIVE DATE: May 9, 2002.
FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2002:

Haywood County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 02–12535 Filed 5–17–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1411–DR]

Virginia; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia, (FEMA–1411–DR), dated May 5, 2002, and related determinations.

EFFECTIVE DATE: May 8, 2002.
FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2002:

Buchanan and Tazewell Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 02–12537 Filed 5–17–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1410–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–14–DR), dated May 5, 2002, and related determinations.

EFFECTIVE DATE: May 8, 2002.
FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2002:

McDowell, Mercer, Mingo, and Wyoming Counties for Public Assistance (already designated for Individual Assistance).

Logan County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment

Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–12536 Filed 5–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 4, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Joseph R. Gregory, Piney Flats, Tennessee; Kingway, LLC, Piney Flats, Tennessee; and Mary Ann Blessing, Bristol, Tennessee; all to acquire additional voting shares of Tennessee Commerce Bancorp, Inc., Franklin, Tennessee, and thereby indirectly acquire additional voting shares of Tennessee Commerce Bank, Franklin, Tennessee.

Board of Governors of the Federal Reserve System, May 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12621 Filed 5–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Americanwest Bancorporation, Spokane, Washington; to merge with Latah Bancorporation, Inc., Latah, Washington, and thereby indirectly acquire Bank of Latah, Saint Maries, Idaho.

Board of Governors of the Federal Reserve System, May 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12526 Filed 5–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. 1867 Western Financial Corporation, Stockton, California, and Capital Corp of the West, Merced, California; to acquire Regency Investment Advisors, Incorporated, Fresno, California, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–12527 Filed 5–17–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–53]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To

request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Support for State Oral Disease Prevention Program Infrastructure Development Evaluation Reporting—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

In 2000, the Surgeon General published the first ever report on oral health in America to alert Americans to the full meaning of oral health and its importance to general health and well-being. Included in the framework for action was the charge to build an effective oral health infrastructure that meets the oral health needs of all Americans and integrates oral health effectively into overall health planning. In response, the CDC will award funds for cooperative agreements to an estimated total of 13 demonstration sites in two phases, for the planning and implementation of oral health capacity infrastructure building and demonstration delivery programs. Building infrastructure enables the demonstration states to develop the capacity to achieve *Healthy People 2010* objectives and reach many more Americans than a single local program could reach and to potentially sustain health gains beyond the funding cycle. Infrastructure development encompasses many activities, each of which can be accomplished in a myriad of methods by the grantees. To summarize and track vital development information across grantee sites, a uniform reporting system must be established for the demonstration sites. Obtaining uniform data will allow the construction of summary reports to assist future sites and not-yet-funded oral health infrastructure development programs.

Evaluation tracking reporting for this project would describe the implementation of each site's infrastructure model in relation to environmental context and state characteristics. The results would provide evidence for the essential implementation strategies for effective infrastructure development as defined by the consensus-based Association of State and Territorial Dental Directors (ASTDD) model. The results would be used to structure flexible guidelines for infrastructure development and identify high-priority activities enabling additional sites to efficiently plan and implement cost-effective oral health improvement activities. Additionally, this project will assist in the development of objectives and indicators of sustainability—the ability of these demonstration programs to meet the needs of their constituents beyond the seed-funding period.

The objectives of the uniform evaluation tracking reporting system are to:

1. Evaluate infrastructure development activity characteristics among the funded sites.

2. Synthesize progress and promote cross-collaboration among grantees.

3. Make progress indicators available to nonfunded sites

4. Promote positive infrastructure growth among funded and non-funded sites.

The above objectives will be attained through a family of uniform evaluation reporting documents designed to evaluate demographic, extent, and culture climate of infrastructure development activities. One respondent from each site will be required to submit the activity-tracking document annually. Participation is mandatory for funded sites. Non-funded sites actively involved in infrastructure development are welcome to submit tracking information to further provide information for all sites. Participation is not mandatory for non-funded sites.

The CDC anticipates that approximately 13 grantee sites will report annually using this method. It has been estimated that the completion of the required forms will take approximately 45 minutes each reporting period. There are no cost to respondents except there time.

Form name	Number of respondents	Number of responses/response	Average burden/response (in hours)	Total burden (in hours)
Support for State Oral Disease Prevention Program Infrastructure Development Evaluation Reporting Activity	13	1	45/60	10
Total				10

Dated: May 9, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–12514 Filed 5–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–54]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Data Collection and Analysis to Determine the Reliability and Validity of Current and Proposed Oral Health Questions, Behavioral Risk Factor Surveillance System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The National Center for Chronic Disease Prevention and Health Promotion, Division of Oral Health, proposes to support data collection and analysis to determine the reliability and validity of current and proposed Oral Health questions for the Behavioral Risk Factor Surveillance System (BRFSS). At the request of the Association of State and Territorial Dental Directors (ASTDD), the Division of Oral Health (DOH) provided technical assistance in standardization of questions to monitor the oral health of adults. Three questions appeared on the BRFSS core in 1999, and were included again in 2002; They permit state dental programs to track progress toward *Healthy People (HP)* objectives for adults (HP 2010: 21–3, 21–4, 21–10), to monitor reported use of a key preventive service for adults (teeth cleaning), and to examine the relationship of oral health indicators to general health status, conditions, and behaviors.

As more state dental programs consider the oral health of adults, states have requested that a bank of additional standardized questions be created to monitor other oral health indicators. CDC/DOH has been reluctant to provide additional technical assistance, without firm data on the reliability and validity of questions. Because all BRFSS questions require self-report by respondents about their own oral health status or behaviors, recall bias and errors in perception exist. To accomplish estimates of response error, answers to existing and proposed BRFSS questions (limit = 10 content questions, plus 7 demographic questions) must be compared to the ''True'' situation of that individual, *i.e.,* that is found in patient charts or other clinical records.

The proposed data collection and analysis will be conducted through the Alliance of Community Health Plans by research foundations affiliated with two dental plans, Kaiser Permanente Northwest, Portland, OR and Health Partners, Minneapolis, MN. The proposed telephone survey, similar to BRFSS, of a convenience sample of 400 dental plan members (200 from each respective HMO) would occur only once. Neither published studies nor informal discussions with dental researchers regarding work in progress uncovered any information that would eliminate the need for this data collection. All work on this project, including linkages between health plan records and responses to the BRFSS questions, will be conducted at the research foundations associated with the respective health plans. CDC will receive only a report on the validity of the questions, and will not have access to the database constructed for the contract.

Study findings will allow CDC to respond to state requests for inclusion of additional standardized questions in an optional oral health module for BRFSS and ensure that any such questions are reliable, valid, and useful for state program planning and evaluation. There is no cost to respondents.

Health plan respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Kaiser Northwest	200	1	15/60	50
Health Partners	200	1	15/60	50
Total				100

Dated: May 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–12515 Filed 5–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–29–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Public Health Performance Standards Program State Public Health System Assessment—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

Since 1998, the CDC National Public Health Performance Standards Program has convened workgroups with the National Association of County and City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health. In the fall of 2000, CDC conducted field tests with the state public health survey instruments in Hawaii, Minnesota, and Mississippi.

CDC is now proposing to implement a formal, voluntary data collection, based on the lessons learned during field testing, to assess the capacity of state public health systems to deliver the Essential Services of Public Health. Electronic data submission will be the method of choice when state and

territorial health departments complete the public health assessment.

An estimated 33 percent of the 59 state and territorial health departments are expected to participate in the National Performance Standards Program during the first year. In year two, an additional 25 percent and in year three, 22 percent. The total burden hours are estimated to be 720.

Data collection period	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Year 1	20	1	15
Year 2	15	1	15
Year 3	13	1	15

Dated: May 10, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–12512 Filed 5–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–28–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National AIDS and STD Hotline Survey of Callers (OMB No. 0920–0295)—Revision—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CD). The purpose of this request is to continue active and passive data collection from people who call the CDC National AIDS and Sexually Transmitted Disease (STD) Hotlines. The mission of the CDC National AIDS and STD Hotlines is to provide the general population of the United States, its territories, and Puerto Rico with highly visible and readily accessible resources for accurate and timely information on HIV/AIDS and other STDs. The CDC is seeking OMB approval for renewal of the data collection with one proposed change and one proposed system enhancement, both aimed at improving the management and evaluation of collected information.

The change is the ability of CDC to survey every 15th caller, instead of every 30th caller, to the hotlines. The information gathered will assist CDC in the improvement of HIV and STD services, particularly to high-risk populations. Before the integration of the National AIDS and STD Hotlines in 1998, every 15th caller was surveyed in the AIDS hotline, and every 30th caller was surveyed in the STD hotline.

The National AIDS Hotline responded to a maximum of 1.6 million calls per year during the 1980s and early 1990s. Throughout the period, the calls have decreased to approximately 650,000 calls per year due to changes such as treatment advances, a more knowledgeable audience, and access to information on the Internet. However, the number of callers selected for the survey has increased to assure that a substantial amount of data can be submitted to CDC regarding information about the callers who contact the hotline. Respondents (callers) will be the general public, and only the callers to the hotlines will be affected.

The enhancement to the data collection is the employment of a partially integrated system that will allow CDC Information Specialists to answer calls about HIV/AIDS and STDs using the same toll free telephone system. The telephone system will be designed to display telephone numbers for both the AIDS Hotline and the STD Hotline. Thus, when a caller contacts the hotline for AIDS information, the phone for the AIDS Hotline will appear on the caller ID. If the caller wants additional information about STDs, the same Information Specialist can respond to the call rather than requesting that the caller place a separate call to the STD Hotline. This process will also allow for an integrated data collection system for AIDS and STD caller information and service evaluation, as well as allow CDC to provide a more efficient and effective means of addressing the needs of its constituents.

In addition, since both hotlines will still retain their separate telephone numbers, the call volume can be monitored separately with distinct extrapolation of data. This integrated system began in August 2000. The integrated system also supports strategies in the *CDC HIV Prevention Strategic Plan Through 2005,* which also states that HIV prevention must be integrated with STD prevention.

Data will be collected on an active and passive basis for both hotlines. The active data collection method occurs while the caller is on the phone. It allows the Information Specialist to gather information about caller demographics such as age, race, ethnicity and education through a short survey administered at the conclusion of the call. The passive data collection instrument allows the Information Specialist to capture more specific information about the characteristics of the caller such as the callers primary topic for discussion, gender, level of concern of caller. The Information Specialist enters this information into a database once the call is completed.

To assist in completing the surveys and providing accurate data responses, the hotlines will be using the CDC Federal Telecommunications Service (FTS) 2001 telephone systems; call length data from the Integrated Information Program (IIP), which is a computer interface. The hotlines will also be using the Automated Call Distribution (ACD) program which allows the calls to be distributed to the correct numbers (AIDS or STD) and Symposium software which can assist the hotlines in several areas, including quickly (1) determining what happened to a call that may be in the queue,(2) compiling a geographic distribution table of all calls throughout the United States, including ages of callers,(3) and routing calls to the English, Spanish or TTY service.

For the AIDS and STD integrated English service, the estimated number of persons surveyed for the active survey

is 34,520, and the average active survey length is 72 seconds with a yearly burden of 691 hours. It is estimated that passive surveys are completed on 29,420 calls, and the average passive survey length for completion is 179 seconds, with a yearly burden of 1,463 hours.

Active surveys for the Spanish service for the AIDS Hotline are estimated to be about 5,040 calls with an average active survey length of 88 seconds. The average number of passive surveys estimated for the Spanish service is 5,000. All callers are surveyed from the TTY service and one out of three callers are surveyed from the Spanish service. The total estimated annualized burden is 1,071 hours.

Survey	Number of respondents	Number of responses per respondent	Average burden per response (in seconds)
AIDS Hotline (English)	21,760	1	1.5
AIDS Hotline (Spanish)	5,040	1	2
AIDS Hotline (TTY Service)	350	1	7
STD Hotline (Spanish)	12,760	1	1.5

Dated: May 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–12513 Filed 5–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: 45 CFR 1309 Head Start Facilities Purchase.

OMB No. 0970–0193.

Description: This regulation contains the administrative requirements applicable to Head Start grantees when applying for funding to purchase Head Start program facilities. The rule ensures that standard business practices are applied when acquiring real property to protect the federal interest in properties purchased with public funds. The rule further ensures compliance with all applicable federal statutes applicable to the expenditure of public funds when purchasing real property.

Respondents: Head Start and Early Head Start grantees applying to purchase program facilities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Regulation	200	1	41	8200
Estimated Total Annual Burden Hours:				8200

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 13, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–12533 Filed 5–17–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00C–1321]

Wesley Jessen Corp.; Filing of Color Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a color additive petition filed by Wesley Jessen, Corp. (now Ciba Vision Corp.), to indicate that the petitioned additive is more appropriately identified as mica coated with iron oxides or mica coated with titanium dioxide for use in contact lenses. The previous filing notice

indicated that the proposed additive was mica for use in contact lenses.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 7, 2000 (65 FR 36148), FDA announced that a color additive petition (CAP 0C0271) had been filed by Wesley Jessen, Corp., 333 East Howard Ave., Des Plaines, IL 60018 (now Ciba Vision Corp., 11460 Johns Creek Pkwy., Duluth, GA 30097–1556). The petition proposed to amend the color additive regulations to provide for the safe use of mica to color contact lenses.

During its review of the petition, the agency determined that the subject color additives are composite pigments, commonly known as pearlescent pigments, composed of mica coated with iron oxides or mica coated with titanium dioxide. Therefore, FDA is amending the filing notice of June 7, 2000, to state that the petition proposes that the color additive regulations in 21 CFR part 73 subpart D—Medical Devices be amended to provide for the safe use of mica coated with iron oxides or mica coated with titanium dioxide, collectively identified as mica-based pearlescent pigments, in contact lenses.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 6, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–12546 Filed 5–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02F–0220]

Nutrinova, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nutrinova, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a general-purpose sweetener and flavor enhancer.

DATES: Submit written or electronic comments on the petitioner's environmental assessment by June 19, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3106.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP No. 2A4735) has been filed by Nutrinova, Inc., 285 Davidson Ave., suite 102, Somerset, NJ 08873. The petition proposes to amend the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) to provide for the safe use of acesulfame potassium as a general-purpose sweetener and flavor enhancer.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (see **ADDRESSES**) for public review and comment. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments, on or before June 19, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: May 6, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–12545 Filed 5–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–13]

Notice of Proposed Information Collection: Comment Request; Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 19, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This Notice also lists the following information.

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Control Number, if applicable: 2502–0358.

Description of the need for the information and proposed use: FHA insures mortgages on single family dwelling under various provisions of the National housing Act (12 U.S.C. 1701, *et seq.*). The Housing and Urban Rural Recovery Act (HURRA), Pub. L. 98–181, amended the National Housing Act to add Section 247 to permit FHA to insure mortgages for properties located on Hawaiian Homelands. Under this program the mortgagor must be a Native Hawaiian. The Statute preconditions that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) agrees to be a co-mortgagor, and (b) guarantees to reimburse the Secretary for any mortgage insurance claims paid in connection with a property on Hawaiian Homelands or offers other security acceptable to the Secretary. The collection of information and the regulatory origins for them are in accordance with Section 203.43i which states that the lender will: (a) Verify that the loan applicant is a Native Hawaiian and that the applicant holds a lease on land in a Hawaiian Homelands' area; (b) report on delinquent borrowers in accordance with Section 203.439(c); and (c) provide documentation to HUD to support that the requirements of Section 203.665 have been met.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 253; the number of respondents is 112 generating approximately 1,170 annual responses; the frequency of response is on occasion; and the number of hours per response varies from 3 minutes to 30 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 9, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–12600 Filed 5–17–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–C–2A]

FY 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grants Programs for Fiscal Year 2002; Technical Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs; technical corrections.

SUMMARY: On March 26, 2002, HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. This document makes certain technical corrections to the following programs: Continuum of Care Homeless Assistance; Youthbuild; Resident Opportunities and Self Sufficiency (ROSS) Program; Section 202 Supportive Housing for the Elderly Program; Section 811 Supportive Housing for Persons with Disabilities Program; Community Outreach Partnership Centers; Historically Black Colleges and Universities; Alaska Native/Native Hawaiian Institutions Assisting Communities Program; Tribal Colleges and Universities Program; Rural Housing and Economic Development; Lead Hazard Control; Healthy Homes and Lead Technical Studies; Healthy Homes Demonstration Program; Brownfields Economic Development Initiative; and Community Development Block Grant (CDBG) Program for Indian Tribes and Alaska Native Villages.

This document also extends the application due date for Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC) to July 20, 2002.

DATES: The application due date for the Alaska Native/Native Hawaiian Institutions Assisting Communities Program, the application due date has been extended to July 20, 2002. All other application due dates remain as published in the **Federal Register** of March 26, 2002.

FOR FURTHER INFORMATION CONTACT: For the Programs listed in this notice, please contact the office or individual listed under the ''For Further Information'' heading in the individual program section of the SuperNOFA, published on March 26, 2002. The application due date for AN/NHIAC is extended to July 20, 2002.

SUPPLEMENTARY INFORMATION: On March 26, 2002 (67 FR 13826), HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. The FY 2002 SuperNOFA announced the availability of approximately $2.2 billion in HUD program funds covering 41 grant categories within programs operated and administered by HUD offices.

This notice published in today's **Federal Register** makes certain corrections and clarifications to the funding availability announcements of the following programs: Continuum of Care Homeless Assistance; Youthbuild; Resident Opportunities and Self Sufficiency (ROSS) Program; Section 202 Supportive Housing for the Elderly Program; Section 811 Supportive Housing for Persons with Disabilities Program; Community Outreach Partnership Centers; Historically Black Colleges and Universities; Tribal Colleges and Universities Program; Rural Housing and Economic Development; Brownfield Economic Development Initiative; Lead Hazard Control; Healthy Homes and Lead Technical Studies; Healthy Homes Demonstration Program; and Community Development Block Grant (CDBG) Program for Indian Tribes and Alaska Native Villages.

Summary of Technical Corrections

A summary of the technical corrections that will be made by this document are as follows. The page numbering shown in bracket identifies where the individual funding availability announcement that is being corrected can be found in the March 26, 2002 SuperNOFA, and the page numbering in parentheses identifies where the specific language that is being corrected can be found in the March 26, 2002 SuperNOFA.

General Section of SuperNOFA [Page 13826]

HUD amends the List of HUD Field Offices in APPENDIX A–1 on page

13844 to show the correct address, phone and FAX numbers of all HUD Field Offices. The previous Appendix contained some inaccurate listings. (*See* page 13844).

Community Development Block Grants for Indian Tribes and Alaskan Native Villages [13907]

In the table on page 13915, under paragraph J of Section V (Application Selection Process), HUD corrects the number of points under Rating Factor 3, Subfactor 1 to read 14 points. HUD also corrects the number of points under Rating Factor 3, Subfactor (2) to read 5 points. Additionally, the entry ''All Project Types'' under ''PROJECT TYPE'' for Rating Factor 2 is erroneous and is removed.

Under Rating Factor 2 (Need/Extent of the Problem) on page 13916, HUD is revising paragraph (2) to add language with respect to the requirements for documenting persons employed by the project.

Paragraph (C)(6) of Section VI on page 13919 is removed, because it is not possible to award RC/EZ/EC bonus points under the Community Development Block Grants For Indian Tribes And Alaskan Native Villages program.

Community Outreach Partnership Centers (COPC) [Page 13927]

Section I on page 13929 is revised to add a new paragraph that sets out the appropriate address to which applications are to be mailed. The revision also corrects the caption and placement of some of the paragraphs in the section.

Paragraph (D) of Section IV (Program Requirements) is amended by adding a new sentence at the end of the paragraph to read ''You should use HUD–3001 Community Outreach Partnership Centers Matching Requirements to show how you have met the match requirements.'' (See page 13931).

Paragraph IV(D)(2)(b) (Outreach Activities) is amended by removing the last two sentences in the second paragraph and substituting the following sentence: ''An example of how you should calculate match correctly, and Forms 30011 (New Directions) and 30012 (New Grants) are included in the Application Kit. The completed form should be included with your application.'' (See page 13931).

Paragraph (C) of Section VI (Application Submission Requirements) is removed because the form is not required. The remaining paragraphs are redesignated accordingly. (See page 13935).

Historically Black Colleges and Universities (HBCU) [Page 13949]

HUD corrects the form number in paragraph (A)(3) of Section VI (Application Submission Requirements) to read SF–424D. (See page 13956).

Hispanic-Serving Institutions Assisting Communities (HSIAC) Program [13969]

In Section III(B) (Eligible Applicants) on page 13972, HUD adds an introductory sentence that clarifies the definition of an ''Eligible Applicant.''

Alaska Native/Native Hawaiian Assisting Communities (AN/NHIAC) Program [13981]

In the Program Overview at page 13981, HUD extends the Application Deadline from June 20, 2002 to July 20, 2002. Consistent with the HUD Reform Act of 1989, this change permits NHIs with multiple campuses time to submit one application per campus, rather than being limited to submitting one application per institution. Similarly, in Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance), page 19383, second column, last paragraph, HUD removes language that limits NHIs with multiple campuses from submitting more than one application per institution.

In Section III(B) (Eligible Applicants), on page 13984, HUD adds an introductory sentence that clarifies the definition of an ''Eligible Applicant.''

Also in Section III(B), in the second paragraph, middle column, HUD corrects the first sentence of the paragraph to read '' If you are an NHI and your institution has multiple campuses, each one is eligible to apply separately, as long as it meets the above-described enrollment threshold. You may undertake as many projects and activities as you want, as long as you do not exceed the $600,000 cap for an application.'' The remainder of the paragraph is removed.

Tribal Colleges and Universities Program [Page 13993]

In Section III(B) (Eligible Applicants) on page 13995, HUD adds an introductory sentence that clarifies the definition of an ''Eligible Applicant.''

In paragraph (E)(3) of Section V (Application Submission Requirements) on page 13999, HUD corrects the number of factors for award to read five.

Lead-Based Paint Hazard Control Grant Program [Page 14065]

HUD amends paragraph B of Section IV (Program Requirements) to add a sentence at the end of the paragraph that reserves to HUD the right to approve no-cost time extensions for a period not to exceed 36 months. (*See* page 14070).

HUD amends paragraph (c)(ii) on page 14074 under Rating Factor 3 (Soundness of Approach) to correct the unit of measurement to read µg with respect to the standard for testing lead in dust.

Healthy Homes and Lead Technical Studies [Page 14091]

HUD amends Section V(A) (Submitting Applications for Grants) on page 14096 to remove the parenthetical phrase—''(*e.g.,* 12 to 24 months from the date of award)''. (See page 14096, middle column, first full paragraph.)

HUD amends Section IV(E) (Period of Performance) by removing the existing language and substituting new language to read as follows: ''*Period of Performance*. The period of performance is 36 months. HUD reserves the right to approve no-cost time extensions for up to an additional 3 years based upon the submission of adequate justification by the grantee.'' (See page 14096).

Healthy Homes Demonstration Program [Page 14113]

HUD amends paragraph (B) (Period of Performance) of Section IV by removing the existing language and substituting new language to read as follows: ''*Period of Performance*. The period of performance is 36 months. HUD reserves the right to approve no-cost time extensions for up to an additional 3 years based upon the submission of adequate justification by the grantee.'' (See page 14117).

Youthbuild [Page 14163]

In Section VI (Application Selection Process), HUD amends paragraph (B)(3)(A)(ii) to remove the word ''more'' and substitute in its place ''fewer.'' (*See* page 14167).

Brownfields Economic Development Initiative (BEDI) [Page 14137]

On page 14147, first column, HUD amends paragraph (G)(4) of Section VI (Application Submission Requirements) to add the requirement that Form HUD 40122, Section 108 Loan Guarantee, State Certifications Related to Nonentitlement Entities be submitted to HUD as part of the BEDI application package, along with the requirement to submit Form HUD–40076–EDI/BEDI, Rating Factor 4: Leveraging Resources/ Financial Need Sources and Uses

Statement. The two Forms are added to Appendix A at pages 14154 and 14155.

Continuum of Care Homeless Assistance Programs [Page 14363]

On page 14364, middle column, HUD amends the final paragraph of Section II (Amount Allocated) to correct the reference to ''FY 2003'' to read ''calendar year 2003''.

On page 14365, third column, Section III(A)(3) (Project Renewals), in line 7 of the first paragraph, HUD also is correcting the reference to ''FY 2003'' to read ''calendar year 2003''.

Resident Opportunities and Self-Sufficiency (ROSS) Program [Page 14205]

HUD amends paragraph (C)(2)(iii) of Section II (Amount Allocated) on page 14208 to clarify the category and maximum amounts for which tribes are eligible. The amendment also makes clear that Tribes/TDHEs may serve a single tribal group.

In paragraph (3)(a)(i) (Maximum grant amount) of Section II (Amount Allocated) on page 14208, the reference to section III(e) is corrected to read II(C)(3)(e).

In paragraph (C)(3)(e) of Section II on page 14208, the reference to the fiscal year is corrected to read 2002, not 2001.

Paragraph (D)(1)(a) of Section III on page 14213 is corrected to add ''and tribes/TDHEs'' immediately after ''(IROs)''.

In paragraph (ii) of Section (II)(C)(5), the introductory phrase is amended by removing the words ''new and''. (See page 14209).

In Section V(D)(2) (Factors for Award Used to Evaluate and Rate HSS Applications) in the second sentence, HUD corrects a typographical error to change the maximum number of points available to read 102, not 1024 (See page 14221).

Paragraph (i) of Section II(C)(4) is amended to add ''/or'' immediately after ''and'' in the first sentence. (See page 14208).

Paragraph (E) (Number of Applications Permitted) of Section II is amended to add a new sentence before the last sentence in the paragraph to read as follows: ''A PHA, RA, RO, or nonprofit may not submit an application to serve the same development.'' (*See* page 14209).

In Section III (Program Description; Eligible Applicants; Eligible Activities) paragraph (F)(1) (Eligible Applicants) is amended by adding ''/or'' immediately after ''and'' and by adding ''or participated'' immediately after ''participates''. Also in Section III, paragraph (F)(2)(a) is amended by adding ''/or'' immediately after ''and'' and by adding ''or participated'' immediately after ''participates''. (*See* page 14215).

Paragraph (E)(2)(b) in Section VI (Application Submission Requirements) is revised to read ''(b) and/or participates or participated in a public housing family self-sufficiency program funded from operating subsidies,'' (*See* page 14229).

Section 202 Supportive Housing for the Elderly [Page 14375]

In Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance), HUD corrects the first paragraph to provide that all mailed applications must be postmarked on or before midnight of June 5, 2002 and received by HUD within 15 days of the due date. (*See* page 14377).

Also in Section I, HUD is adding a paragraph 5 to state that ''Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office.'' (See middle column, page 14377). Further, HUD is notifying applicants of address changes to several local HUD offices. See the Section 811 technical corrections involving page 14439 of the Section 811 program NOFA.

The **Note** at the end of Section III(D) (Ineligible Activities) is amended to clarify that existing Federally funded or assisted projects or projects insured or guaranteed by a Federal agency involving refinancing are not permissible activities under this Section 202 NOFA. This clarification is necessary because HUD does not consider it appropriate to utilize scarce program resources to refinance projects that have already received some form of assistance under a Federal program. For example, Section 202 or Section 202/8 direct loan projects cannot be refinanced with capital advances and project rental assistance. (*See* middle column, page 14383).

Section V(C) on page 14385, middle column, is amended to add Renewal Communities (RC) to the other two federally designated areas appearing in the section. Identical amendments are made to Section V(D), first column (see page 14386), Section V(D), **Bonus Points,** third column (see page 14387), and the Table of Contents in Appendix B (see page 14396). The reference in Section V(C), Section V(D) and in the Table of Contents in Appendix B now reads RC/EZ/EC, making it consistent with the reference used in Section III(C)(1) of the General Section of the SuperNOFA. (*See* page 13839). The amendment clarifies that projects that are located in an RC/EZ/EC area are eligible to receive the two bonus points in the rating of their application.

HUD amends paragraph (B)(7)(i) of Section VI (Application Submission Requirements) to correct the title of Form HUD–2990 to read *Certification of Consistency with the RC/EZ/EC Strategic Plan (HUD–2990).* (See page 14391).

In Section VI (Application Submission Requirements), paragraph (B)(4)(c)(iv) is amended to read ''Describe your plan for getting your project to initial closing and start of construction within the initial 18-month term of the fund reservation (optional).'' (See page 14389). In making the revision, HUD is not asking applicants to describe their plans to complete construction and finally close the project within the initial 18-month fund reservation term because HUD recognizes that such an event would be unlikely.

Under Rating Factor 3 (Soundness of Approach), paragraph (h) is amended to read ''(-1 point) Your application did not include a plan for getting your project to initial closing and start of construction within the initial fund reservation period of 18-months.'' (*See* page 14387). The amendment here is consistent with the change made to Section VI(B)(4)(c)(iv).

Paragraph (B)(4)(d)(i)(A) (pertaining to HUD's site control requirements) of Section VI (Application Submission Requirements) is amended to require a lease with a term of 50 years with renewable provisions for 25 years in cases where the form of site control is a leasehold. HUD recognizes that in some areas, applicants are unable to obtain a lease on sites for an initial term of 75 years due to, for example, state, local or tribal laws prohibiting such long-term leases. This restriction has the effect of excluding such sites from the Section 202 program. HUD has determined to make the change to require 50-year leases with renewable provisions for 25 years to expand the supply of housing for the elderly in those areas that otherwise would be denied the benefit of such housing.

In Appendix B, HUD corrects the Application Form needed to file your Section 202 application with HUD and replaces it with Form HUD–92015–CA, Supportive Housing for the Elderly, Section 202, Application for Capital Advance Summary Information. (See page 14397) This correction is necessary because Form HUD–92016–CA, Section 811, Application for Capital Advance Summary Information, which was

inadvertently included in Appendix B of the Section 202 program NOFA, is not used in filing a Section 202 application.

Section 811 Supportive Housing for Persons With Disabilities [Page 14421]

In Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance), HUD corrects the first paragraph to provide that all mailed applications must be postmarked on or before midnight of June 5, 2002 and received by HUD within 15 days of the due date. (See page 14423).

Also in Section I, HUD is adding a paragraph 5 to state that ''Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office''. (*See* middle column, page 14423). APPENDIX A: Local HUD Offices in the section captioned **Notes** similarly is amended to reflect the addition of paragraph 5 and corrections to addresses and/or telephone numbers of several local HUD Offices (listed as paragraph 6 in APPENDIX A). (*See* page 14439).

HUD amends the Fiscal Year 2002 Section 811 Allocations chart on page 14427 to add the following footnote to the Los Angeles Hub total (the footnote is indicated by an asterisk): ''This amount includes $518,500 in capital advance authority to fund Therapeutic Living Centers for the Blind of West Hills, California. Since this 6-unit project was not selected in FY 2001 due to HUD error, the application will be funded from the FY 2002 allocation to the Los Angeles Office.''

The **Note** at the end of Section III(C) (Eligible Activities) is amended to clarify that existing Federally funded or assisted projects or projects insured or guaranteed by a Federal agency involving refinancing are not permissible activities under this Section 811 NOFA. This clarification is necessary because HUD does not consider it appropriate to utilize scarce program resources to refinance projects that have already received some form of assistance under a Federal program. For example, Section 202, Section 202/8, or 202/PAC direct loan projects cannot be refinanced with capital advances and project rental assistance. (See middle column, page 14428).

Section V(C) on page 14431 is amended to add Renewal Communities (RC) to the other two federally designated areas appearing in the section. Identical amendments are made to Section V(D), first column, (see page 14432), Section V(D), **Bonus Points**, third column, (see page 14433), and the Table of Contents in the Appendix to the NOFA (see page 14446). The reference in Section V(C), V(D), and in the Table of Contents in the Appendix now reads RC/EC/EZ, making it consistent with the reference used in Section III(C)(1) of the General Section of the SuperNOFA. (See page 13839). The amendment clarifies that projects that are located in an RC/EZ/EC area are eligible to receive the two bonus points in the rating of their application.

HUD amends paragraph (B)(7)(i) of Section VI (Application Submission Requirements) to correct the title of Form HUD–2990 to read *Certification of Consistency with the RC/EZ/EC Strategic Plan (HUD–2990).* (*See* page 14438).

Paragraph (B)(4)(c)(iv) in Section VI is amended to read ''Describe your plan for getting your project to initial closing and start of construction within the initial 18-month term of the fund reservation (optional).'' (See page 14435). The amendment makes it clear that HUD is not asking applicants to describe their plans to complete construction and finally close the project within the initial 18-month fund reservation term because HUD recognizes that such an event would be unlikely.

Under Rating Factor 3 (Soundness of Approach), paragraph (f) is amended to read ''(-1 point) Your application did not include a plan for getting your project to initial closing and start of construction within the initial fund reservation period of 18-months.'' (*See* page 14433). The amendment here is consistent with the change made to Section VI(B)(4)(c)(iv).

Paragraph (B)(4)(d)(i)(A) (pertaining to HUD's site control requirements) of Section VI(Application Submission Requirements) is amended to require a lease with a term of 50 years with renewable provisions for 25 years in cases where the applicant submits an application with site control and the form of site control is a leasehold. HUD recognizes that in some areas, applicants are unable to obtain a lease on sites for an initial term of 75 years due to, for example, state, local or tribal laws prohibiting such long-term leases. This restriction has the effect of excluding such sites from the Section 811 program. HUD has determined to make the change to require 50-year leases with renewable provisions for 25 years to expand the supply of housing for persons with disabilities in those areas that otherwise would be denied the benefit of such housing.

Accordingly, in the Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grant Programs for Fiscal Year 2002 [Docket No. FR–4723–N–01], beginning at 67 FR 13826, in the issue of Tuesday, March 26, 2002, the following corrections are made.

1. General Section of SuperNOFA, Beginning at 67 FR 13826

Appendix A–1 List of HUD Field Offices beginning on page 13844 and continuing through page 13859 is removed and replaced with a corrected Appendix A–1. List of HUD Field Offices.

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APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
NEW ENGLAND	Boston, MA	O'Neil Federal Building 10 Causeway Street Boston, MA 02222-1092 OFC PHONE (617) 994-8203 FAX (617) 565-6558
NEW ENGLAND	Hartford, CT	One Corporate Center Hartford, CT 06103 OFC PHONE (860) 240-4844 FAX (860) 240-4850
NEW ENGLAND	Bangor, ME	202 Harlow Street - Chase Bldg. Suite 101 Bangor, ME 04402-1384 OFC PHONE (207) 945-0468 FAX (207) 945-0533
NEW ENGLAND	Manchester, NH	Norris Cotton Federal Bldg. 275 Chestnut Street Manchester, NH 03101-2487 OFC PHONE (603) 666-7682 FAX (603) 666-7667
NEW ENGLAND	Providence, RI	10 Weybosset Street Sixth Floor Providence, RI 02903-2808 OFC PHONE (401) 528-5352 FAX (401) 528-5097
NEW ENGLAND	Burlington, VT	159 Bank Street, 2nd Floor Burlington, VT 05401 OFC PHONE (802) 951-6290 FAX (802) 951-6298
NEW YORK/NEW JERSEY	New York, NY	26 Federal Plaza - Suite 3541 New York, NY 10278-0068 OFC PHONE (212) 264-1161 FAX (212) 264-3068
NEW YORK/NEW JERSEY	Albany, NY	52 Corporate Circle Albany, NY 12203-5121 OFC PHONE (518) 464-4200 Ext. 4204 FAX (518) 464-4300
NEW YORK/NEW JERSEY	Buffalo, NY	Lafayette Court, 5th Floor 465 Main Street Buffalo, NY 14203-1780 OFC PHONE (716) 551-5733 Ext. 5000 FAX (716) 551-5752
NEW YORK/NEW JERSEY	Syracuse, NY	128 Jefferson Street Syracuse, NY 13202 OFC PHONE (315) 477-0616 FAX (315) 477-0196
NEW YORK/NEW JERSEY	Newark, NJ	One Newark Center Newark, NJ 07102-5260 OFC PHONE (973) 622-7619 FAX (973) 645-2323
NEW YORK/NEW JERSEY	Camden, NJ	2nd Floor - Hudson Bldg. 800 Hudson Square Camden, NJ 08102-1156 OFC PHONE (856) 757-5081 FAX (856) 757-5373
MID-ATLANTIC	Philadelphia, PA	The Wanamaker Building 100 Penn Square, East Philadelphia, PA 19107-3380 OFC PHONE (215) 656-0600 FAX (215) 656-3445
MID-ATLANTIC	Pittsburgh, PA	339 Sixth Avenue - Sixth Floor Pittsburgh, PA 15222-2515 OFC PHONE (412) 644-5945 FAX (412) 644-4240
MID-ATLANTIC	Wilmington, DE	920 King Street, STE 404 Wilmington, DE 19801-3337 OFC PHONE (302) 573-6300 FAX (302) 573-6259
MID-ATLANTIC	Baltimore, MD	10 South Howard Street, 5th Floor Baltimore, MD 21201-2505 OFC PHONE (410) 962-2520 Ext. 3474 FAX (410) 962-1849
MID-ATLANTIC	Richmond, VA	600 East Broad Street Richmond, VA 23219 OFC PHONE (804) 771-2100 Ext. 3736 FAX (804) 771-2090
MID-ATLANTIC	Washington, DC	820 First Street NE, Suite 300 Washington, DC 20002-4205 OFC PHONE (202) 275-9206 Ext. 3075 FAX (202) 275-9212
MID-ATLANTIC	Washington, DC	801 N. Capitol St NE Washington, DC 20002 (202) 275-9200 Ext. 3141
MID-ATLANTIC	Charleston, WV	405 Capitol Street, Suite 708 Charleston, WV 25301-1795 OFC PHONE (304) 347-7036 Ext. 101 FAX (304) 347-7050
SOUTHEAST/CARIBBEAN	Atlanta, GA	40 Marietta Street - Five Points Plaza Atlanta, GA 30303-2806 OFC PHONE (404) 331-4111 FAX (404) 730-2392
SOUTHEAST/CARIBBEAN	Birmingham, AL	Medical Forum Bldg 950 22nd Street North, Suite 900 Birmingham, AL 35203-5301 OFC PHONE (205) 731-2617 FAX (205) 290-7593
SOUTHEAST/CARIBBEAN	San Juan, PR	171 Carlos E. Chardon Avenue San Juan, PR 00918-0903 OFC PHONE (787) 766-5201 FAX (787) 766-5995

APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
SOUTHEAST/CARIBBEAN	Louisville, KY	601 West Broadway Louisville, KY 40201-1044 OFC PHONE (502) 582-5251 FAX (502) 582-6074
SOUTHEAST/CARIBBEAN	Miami, FL	909 SE First Avenue Miami, FL 33131 OFC PHONE (305) 536-5678 FAX (305) 536-5765
SOUTHEAST/CARIBBEAN	Jacksonville, FL	301 West Bay Street, Suite 2200 Jacksonville, FL 32202-5121 OFC PHONE (904) 232-2627 FAX (904) 232-3759
SOUTHEAST/CARIBBEAN	Orlando, FL	3751 Maguire Boulevard, Room 270 Orlando, FL 32803-3032 OFC PHONE (407) 648-6441 FAX (407) 648-6310
SOUTHEAST/CARIBBEAN	Tampa, FL	500 E. Zack Street, Suite 402 Tampa, FL 33602 OFC PHONE (813) 228-2504 FAX (813) 228-2431
SOUTHEAST/CARIBBEAN	Jackson, MS	McCoy Federal Building 100 W. Capitol Street, Room 910 Jackson, MS 39269-1096 OFC PHONE (601) 965-4700 Ext. 2105 FAX (601) 965-4773
SOUTHEAST/CARIBBEAN	Greensboro, NC	Koger Building 2306 West Meadowview Road Greensboro, NC 27401-3707 OFC PHONE (336) 547-4001, 4002,4003 FAX (336) 547-4138
SOUTHEAST/CARIBBEAN	Columbia, SC	1835 Assembly Street Columbia, SC 29201-2480 OFC PHONE (803) 765-5592 FAX (803) 253-3040
SOUTHEAST/CARIBBEAN	Nashville, TN	235 Cumberland Bend, Suite 200 Nashville, TN 37228-1803 OFC PHONE (615) 736-5213 ext. 7120 FAX (615) 736-2018
SOUTHEAST/CARIBBEAN	Knoxville, TN	710 Locust Street, SW Knoxville, TN 37902-2526 OFC PHONE (865) 545-4384 FAX (423) 545-4569
SOUTHEAST/CARIBBEAN	Memphis, TN	200 Jefferson Avenue, Suite 1200 Memphis, TN 38103-2335 OFC PHONE (901) 544-3367 FAX (901) 544-3697
MIDWEST	Chicago, IL	Ralph Metcalfe Federal Building 77 West Jackson Boulevard Chicago, IL 60604-3507 OFC PHONE (312) 353-5680 FAX (312) 886-2729
MIDWEST	Indianapolis, IN	151 North Delaware Street, Suite 1200 Indianapolis, IN 46204-2526 OFC PHONE (317) 226-6303, ext. 7034 FAX (317) 226-6317
MIDWEST	Detroit, MI	477 Michigan Avenue Detroit, MI 48226-2592 OFC PHONE (313) 226-7900 FAX (313) 226-5611
MIDWEST	Flint, MI	Municipal Center, North Building 1101 S. Saginaw Street Flint, MI 48502 OFC PHONE (810) 766-5112 FAX (810) 766-5122
MIDWEST	Grand Rapids, MI	Trade Center Building 50 Louis Street, N.W. Grand Rapids, MI 49503-2633 OFC PHONE (616) 456-2100 FAX (616) 456-2114
MIDWEST	Minneapolis, MN	920 Second Avenue South Minneapolis, MN 55402 OFC PHONE (612) 370-3288 FAX (612) 370-3220
MIDWEST	Columbus, OH	200 North High Street Columbus, OH 43215-2499 OFC PHONE (614) 469-2540, Ext. 8116 FAX (614) 469-2432
MIDWEST	Cincinnati, OH	15 East 7th Street Cincinnati, OH 45202-2967 OFC PHONE (513) 684-2967 FAX (513) 684-6224
MIDWEST	Cleveland, OH	1350 Euclid Avenue, Suite 500 Cleveland, OH 44115-1815 OFC PHONE (216) 522-4058 Ext. 7102 FAX (216) 522-4067
MIDWEST	Milwaukee, WI	310 West Wisconsin Avenue, Room 1380 Milwaukee, WI 53203-2289 OFC PHONE (414) 297-3214 ext. 8000 FAX (414) 297-3947
SOUTHWEST	Ft. Worth, TX	801 Cherry St, PO Box 2905 Ft. Worth, TX 76113-2905 OFC PHONE (817) 978-5965 FAX (817) 978-5567
SOUTHWEST	Dallas, TX	525 Griffin Street, Room 860 Dallas, TX 75202-5007 OFC PHONE (214) 767-8300 FAX (214) 767-8973
SOUTHWEST	Houston, TX	2211 Norfolk #200 Houston, TX 77098-4096 OFC

APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
		PHONE (713) 313-2274 ext. 7015 FAX (713) 313-2319
SOUTHWEST	Lubbock, TX	1205 Texas Avenue, Room. 511F Lubbock, TX 79401-4093 OFC PHONE (806) 472-7265 Ext. 3030 FAX (806) 472-7275
SOUTHWEST	San Antonio, TX	800 Dolorosa San Antonio, TX 78207-4563 OFC PHONE (210) 475-6806 FAX (210) 472-6804
SOUTHWEST	Little Rock, AR	425 West Capitol Avenue #900 Little Rock, AR 72201-3488 OFC PHONE (501) 324-5401 FAX (501) 324-6142
SOUTHWEST	New Orleans, LA	Hale Boggs Bldg. 501 Magazine Street, 9th Floor New Orleans, LA 70130-3099 OFC PHONE (504) 589-7201 FAX (504) 589-6619
SOUTHWEST	Shreveport, LA	401 Edwards Street, Room. 1510 Shreveport, LA 71101-3289 OFC PHONE (318) 676-3440 FAX (318) 676-3407
SOUTHWEST	Albuquerque, NM	625 Silver Avenue SW, Suite 100 Albuquerque, NM 87102 OFC PHONE (505) 346-6463 Ext. 7332 FAX (505) 346-6704
SOUTHWEST	Oklahoma City, OK	500 W. Main Street, Suite 400 Oklahoma City, OK 73102-2233 OFC PHONE (405) 553-7500 FAX (405) 553-7588
SOUTHWEST	Tulsa, OK	1516 S Boston Ave, Suite 100 Tulsa, OK 74119 OFC PHONE (918) 581-7168 FAX (918) 581-7440
GREAT PLAINS	Kansas City, KS	400 State Avenue, Room 200 Kansas City, KS 66101-2406 OFC PHONE (913) 551-5462 Ext. 5 FAX (913) 551-5469
GREAT PLAINS	Des Moines, IA	210 Walnut Street, Room 239 Des Moines, IA 50309-2155 OFC PHONE (515) 284-4573 FAX (515) 284-4743
GREAT PLAINS	Omaha, NE	10909 Mill Valley Road, Suite 100 Omaha, NE 68154-3955 OFC PHONE (402) 492-3103 FAX (402) 492-3150
GREAT PLAINS	St. Louis, MO	1222 Spruce Street #3207 St. Louis, MO 63103-2836 OFC PHONE (314) 539-6560 FAX (314) 539-6384
ROCKY MOUNTAINS	Denver, CO	HUD Denver Office 633 17th Street, 14th Floor Denver, CO 80202-3607 OFC PHONE (303) 672-5440 FAX (303) 672-5004
ROCKY MOUNTAINS	Helena, MT	7 W 6th Avenue Helena, MT 59601 OFC PHONE (406) 449-5048 FAX (406) 441-1292
ROCKY MOUNTAINS	Fargo, ND	657 2nd Avenue North, Room 366 Fargo, ND 58108 OFC PHONE (701) 239-5040 FAX (701) 239-5249
ROCKY MOUNTAINS	Sioux Falls, SD	2400 West 49th Street, Room. I-201 Sioux Falls, SD 57105-6558 OFC PHONE (605) 330-4223 FAX (605) 330-4428
ROCKY MOUNTAINS	Salt Lake City, UT	257 East, 200 South, Room. 550 Salt Lake City, UT 84111-2048 OFC PHONE (801) 524-6071 FAX (801) 524-3439
ROCKY MOUNTAINS	Casper, WY	150 East B Street, Room 1010 Casper, WY 82601-7005 OFC PHONE (307) 261-6251 FAX (307) 261-6245
PACIFIC/HAWAII	San Francisco, CA	450 Golden Gate Avenue San Francisco, CA 94102-3448 OFC PHONE (415) 436-6532 FAX (415) 436-6446
PACIFIC/HAWAII	Fresno, CA	2135 Fresno Street, Suite 100 Fresno, CA 93721-1718 OFC PHONE (559) 487-5032 Ext. 232 FAX (559) 487-5191
PACIFIC/HAWAII	Los Angeles, CA	611 W. Sixth Street, Suite 800 Los Angeles, CA 90017 OFC PHONE (213) 894-8007 FAX (213) 894-8110
PACIFIC/HAWAII	Sacramento, CA	925 L Street Sacramento, CA 95814 OFC PHONE (916) 498-5220 Ext. 322 FAX (916) 498-5262
PACIFIC/HAWAII	San Diego, CA	Symphony Towers 750 B Street, Suite 1600 San Diego, CA 92101-8131 OFC PHONE (619) 557-5310 FAX

APPENDIX A-1. LIST OF HUD FIELD OFFICES

Region	Office	Address and phone numbers
		(619) 557-5312
PACIFIC/HAWAII	Santa Ana, CA	1600 N. Broadway, Suite 100 Santa Ana, CA 92706-3927 OFC PHONE (714) 796-5577 Ext. 3006 FAX (714) 796-1285
PACIFIC/HAWAII	Phoenix, AZ	One North Central Avenue, Suite 600 Phoenix, AZ 85004 OFC PHONE (602) 379-7100 FAX (602) 379-3985
PACIFIC/HAWAII	Tucson, AZ	160 N Stone Ave Tucson, AZ 85701 OFC PHONE (520) 670-6000 FAX (520) 670-6207
PACIFIC/HAWAII	Honolulu, HI	500 Ala Moana Blvd. #3A Honolulu, HI 96813-4918 OFC PHONE (808) 522-8175 Ext. 256 or 259 FAX (808) 522-8194
PACIFIC/HAWAII	Las Vegas, NV	333 N. Rancho Drive - Atrium Bldg. Suite 700 Las Vegas, NV 89106-3714 OFC PHONE (702) 388-6208/6500 FAX (702) 388-6244
PACIFIC/HAWAII	Reno, NV	3702 S. Virginia Street Reno, NV 89502-6581 OFC PHONE (775) 784-5356 FAX (775) 784-5066
NORTHWEST/ALASKA	Seattle, WA	909 First Avenue, Suite 200 Seattle, WA 98104-1000 OFC PHONE (206) 220-5101 FAX (206) 220-5108
NORTHWEST/ALASKA	Spokane, WA	US Courthouse Bldg. 920 W. Riverside, Suite 588 Spokane, WA 99201-1010 OFC PHONE (509) 353-0674 FAX (509) 353-0682
NORTHWEST/ALASKA	Anchorage, AK	949 East 36th Avenue, Suite 401 Anchorage, AK 99508-4399 OFC PHONE (907) 271-4170 FAX (907) 271-3778
NORTHWEST/ALASKA	Boise, ID	Plaza IV, Suite 220 800 Park Boulevard Boise, ID 83712-7743 OFC PHONE (208) 334-1990 ext. 3007 FAX (208) 334-9648
NORTHWEST/ALASKA	Portland, OR	400 SW 6th Avenue #700 Portland, OR 97204-1632 OFC PHONE (503) 326-2561 FAX (503) 326-2568
MIDWEST	Springfield, IL	320 West Washington 7th Floor Springfield, IL 62701-1135 OFC PHONE (217) 492-4120

BILLING CODE 4210–32–C

2. Community Development Block Grants for Indian Tribes and Alaskan Native Villages, Beginning at 67 FR 13907

On page 13915, in the table under paragraph (J) (Factors for Award Used to Evaluate and Rate Applications), HUD makes the following corrections:

(a) the number of points under Rating Factor 3, Subfactor (1) is corrected to read 14.

(b) the number of points under Rating Factor 3, Subfactor (2) is corrected to read 5.

(c) Under the heading ''Project Type'', for Rating Factor 2 the entry ''All Project Types'' is removed.

As corrected, the table now reads as follows:

Rating factor	Rating sub-factor	Points	Project type
1	Total	30	Minimum of 15 Points Required.
	(1)(a)	10	All Project Types.
	(1)(b)	5 or 7	All Project Types.
	(1)(c)	3 or 8*	All Project Types.
	(1)(d)	2 or 5*	All Project Types.
	(2)(a)	2 or 0*	All Project Types.
	(2)(b)	2 or 0*	All Project Types.
	(2)(c)	2 or 0*	All Project Types.
	(2)(d)	2 or 0*	All Project Types.
	(2)(e)	2 or 0*	All Project Types.
2	Total	20	
	1	5	All Project Types.
	(2)(a)	15	Public Facilities and Improvements and Economic Development Projects.
	(2)(b)	15	New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects.
	(2)(c)	15	Microenterprise Programs.
3	Total	35	
	(1)	14	All Project Types.
	(2)	5	All Project Types.
	(3)	1	All Project Types.

Rating factor	Rating sub-factor	Points	Project type
	(4)(a)(i)	15	Public Facilities and Improvements (tribe assumes O & M responsibilities).
	(4)(a)(ii)	15	Public Facilities and Improvements (entity other than tribe assumes O&M responsibilities).
	(4)(b)	15	New Housing Construction, Housing Rehabilitation, and Homeownership Assistance Projects.
	(4)(c)	15	Economic Development.
	(4)(d)	15	Microenterprise Programs.
	(4)(e)	15	Land Acquisition to Support New Housing.
4	Total	10	All Project Types.
5	Total	5	All Project Types.
Total Possible		100	Minimum of 70 Points Required.

*The first number listed indicates the maximum number of points available to current ICDBG grantees under this sub-factor. The second number indicates the maximum number of points available to new applicants.

On page 13916, under Rating Factor 2 (Need/Extent of the Problem), HUD adds the following language to the end of paragraph (2)—

For documenting persons employed by the project, you do not need to submit a demographic data certification and corresponding documentation. However, you do need to submit information that describes the nature of the jobs created or retained. Such information includes but is not limited to proposed job descriptions, salaries and the number of full-time equivalent positions. If you believe jobs will be retained as a result of the ICDBG project, include information that shows clearly and objectively, that jobs will be lost without the ICDBG project. Jobs that are retained only for the period of the grant will not count under this Rating Factor.

On page 13919, paragraph (C)(6) of Section VI (Application Submission Requirements) is removed.

On page 13919, existing paragraphs (C)(7) and (C)(8) of Section VI (Application Submission Requirements) are renumbered (C)(6) and (C)(7), respectively.

3. Community Outreach Partnership Centers (COPC), Beginning at 67 FR 13929

On page 13929, Section I, HUD corrects the caption (the text of the paragraph remains unchanged) that reads ''Address for Submitting Applications'' to read ''Application Submission Procedures''.

On page 13929 in Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance), HUD adds a new section to follow the paragraph captioned ''Mailed Applications'' to read as follows:

Address for Submitting Applications. Your completed application consists of one original and two copies of your application. Submit the original and two copies to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC, 20410. When submitting your application, please refer to the COPC program, and include your name, mailing address (including zip code) and telephone number (including area code).

On page 13931, HUD amends Section IV(D) (Match) by adding a new sentence at the end of the section to read as follows:

You should use HUD–30001 Community Outreach Partnership Centers Matching Requirements to show how you have met the match requirements.

On page 13931, HUD amends Section IV(D)(1)(b) by removing the last two sentences in the second paragraph and adding new language in their place. As amended, the new paragraph now reads:

(b) *Outreach Activities.* 35% of the total project costs of establishing and operating outreach activities.

In previous competitions, some applicants incorrectly based their match calculations on the Federal grant amount, not on the total project costs. An example of how you should calculate match correctly, and Forms 30011 (New Directions) and 30012 (New Grants) are included in the Application Kit. The completed form should be included with your application.

On page 13935, paragraph (C) (Application Checklist) of Section VI (Application Submission Requirements) is removed.

4. Historically Black Colleges and Universities (HBCU), Beginning at 67 FR 13951

On page 13956, in paragraph (A)(3) of Section VI (Application Submission Requirements), HUD corrects the form number to read SF–424D, Assurances for Construction Programs.

5. Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, Beginning at 67 FR 13971

On page 13972, HUD amends Section III(B) (Eligible Applicants) by adding an introductory sentence to read as follows:

''Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.'' With the addition of the sentence, paragraph (B) now reads as follows:

(B) *Eligible Applicants.* Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Only if your institution is a nonprofit institution of higher education and meets the statutory definition of an HSI in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244) are you eligible to apply. In order for you to meet this definition, at least 25 percent of the full-time undergraduate students enrolled in your institution must be Hispanic and not less than 50 percent of these Hispanic students must be low-income individuals. You are not required to be on the list of eligible institutions prepared by the U.S. Department of Education. However, if you are not, you will be required to certify in the application that you meet the statutory definition. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses. In addition, in order to fund as many different HSIs as possible, you can only apply if you did not receive an HSIAC grant in FY 2001. If you received an HSIAC grant in FY 2000, you may reapply as long as: (1) you propose an

entirely new project for a different activity; (2) you propose a different project director; and (3) you have drawn down at least 75% of your previous grant by the application due date.

6. Alaska Native/Native Hawaiian Assisting Communities (AN/NHIAC) Program, Beginning at 67 FR 13983

On page 13983, HUD amends the paragraph entitled ''Application Deadline'' in the Program Overview Section to read as follows:

Application Deadline: July 20, 2002.

On page 13983, HUD amends Section I, second column, last paragraph, second sentence, to read as follows: ''For ANIs, HUD only will accept one application per campus. Similarly, for NHIs HUD will only accept one application per campus.'' HUD also removes the balance of this paragraph.

On page 13984, HUD amends Section III(B) by adding a new introductory sentence to read as follows: ''Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.'' Also, HUD corrects the first sentence in the second paragraph of Section III(B) to read as follows: ''If you are an NHI and your institution has multiple campuses, each one is eligible to apply separately, as long as it meets the above-described enrollment threshold. You may undertake as many projects and activities as you want, as long as you do not exceed the $600,000 cap for an application.''

As amended, Section III(B) now reads as follows:

(B) *Eligible Applicants.* Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Only if your institution is a nonprofit institution of higher education and meets the statutory definition of either an Alaska Native institution of higher education or a Native Hawaiian institution of higher education, as contained in Title III, Part A, Section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub. L. 105–244) are you eligible to apply. If you are an Alaska Native institution of higher education, in order for you to meet this definition, at least 20 percent of your undergraduate headcount enrollment must be Alaska Native students. If you are a Native Hawaiian institution of higher education, in order to meet this definition at least 10 percent of your undergraduate headcount enrollment must be Native Hawaiian students. You are not required to be on a list of eligible AN/NHIs prepared by the U.S. Department of Education. However, if you are not, you will be required to certify in the application that you meet the statutory definition. If you are an ANI and received a grant in FY 2001, you are not eligible to submit an application in FY 2002. If you are an NHI and received a grant in FY 2001, you are not permitted to submit an application for the same specific project in a different neighborhood, another project in the same neighborhood, or another project with the same project director as the project funded in FY 2001.

If you are an NHI and your institution has multiple campuses, each one is eligible to apply separately, as long as it meets the above-described enrollment threshold. You may undertake as many projects and activities as you want, as long as you do not exceed the $600,000 cap for an application.

7. Tribal Colleges and Universities Program, Beginning at 67 FR 13995

On page 13995, HUD amends Section III(B) by adding a new introductory sentence to read as follows:

''Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.'' As amended, Section III(B) now reads as follows:

(B) *Eligible Applicants.* Eligible applicants are public or private nonprofit institutions of higher education granting two- or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Only if your institution is a nonprofit institution of higher education and meets the statutory definition of a TCU in Title III of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244) are you eligible to apply. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses.

On page 13999, in paragraph (E)(3) of Section V (Application Submission Requirements), HUD corrects the number of factors for award to read five, instead of four. As amended, paragraph (E)(3) now reads as follows:

(3) Your narrative statement addressing the factors for award should address each of the five factors for award. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.)

In addressing Factor 4, for each leveraging source, cash or in-kind, you must submit a letter, dated no earlier than the date of this NOFA, from the provider on the provider's letterhead that addresses the following:

8. Lead-Based Paint Hazard Control Grant Program, Beginning at 67 FR 14067

On page 14070, HUD amends Section IV(B) (Period of Performance) to add a sentence at the end of paragraph (B) to read as follows: HUD reserves the right to approve no-cost time extensions based upon the submission of adequate justification by the grantee. As amended, paragraph (B) now reads:

(B) *Period of Performance.* The period of performance is 36 months for first-time grant recipients. The period of performance for current and prior grantees is 30 months, except grantees receiving an award under a ''Request for Renewal,'' for which there is a 24-month period of performance. HUD reserves the right to approve no-cost time extensions for a period of up to 36 months based upon the submission of adequate justification by the grantee.

On page 14074, HUD amends paragraph (c)(ii) under Rating Factor 3 (Soundness of Approach) to correct the unit of measurement to read µg with respect to the standard for testing lead in dust. The corrected paragraph (c)(ii) now reads:

(ii) Describe your testing methods, schedule, and costs for performing blood lead testing, risk assessments, inspections and clearance examinations to be used. If you propose to use a more restrictive standard than the HUD/EPA thresholds (*e.g.,* less than 0.5% or 1.0 mg/ square centimeter for lead in paint, or less than 40, 250, 400 µg/square foot for lead in dust on floors, sills and troughs respectively); or 400 ppm in bare soil in children's play areas and 1200 ppm for bare soil in the rest of the yard), identify the standard(s) that will be used. All testing shall be performed in accordance with applicable regulations.

9. Healthy Homes and Lead Technical Studies, Beginning at 67 FR 14093

On page 14096, HUD amends paragraph (E) (Period of Performance) of Section IV by removing the existing language and substituting new language.

As amended, Section IV(E) now reads as follows:

(E) *Period of Performance.* The period of performance is 36 months. HUD reserves the right to approve no-cost time extensions for up to an additional 3 years based upon the submission of adequate justification by the grantee.

On page 14096, HUD amends Section V(A) (Submitting Applications for Grants) to remove the parenthetical phrase—''(*e.g.,* 12 to 24 months from the date of award)''. (The parenthetical phrase appears in the fourth paragraph in Section V(A). As amended, Section (V)(A) now reads:

(A) Submitting Applications for Grants. Applications that meet all of the threshold requirements will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described below in Section V(B) of this program section of the SuperNOFA. Your application must receive a total score of at least 70 points to remain in consideration for funding.

Awards will be made separately in rank order for Healthy Homes Technical Studies applications and Lead Technical Studies applications, within the limits of funding availability for each program.

Within each of the two technical studies programs, you may address more than one of the technical study topic areas within your proposal (*e.g.,* a HH technical studies applicant can address multiple topics consistent with the HHI program objectives), or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area. While you will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for technical study in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

Regarding the amount to be awarded to the selected applicants, please refer to the Negotiations section in the General Section of the SuperNOFA.

Grants will be awarded in amounts ranging in size from $250,000 to $1 million. Final dollar amounts will be negotiated based upon the initial application submission, elimination of duplicative programs or activities based upon previously funded awards or selected applicants and ineligible activities.

10. Healthy Homes Demonstration Program, Beginning at 67 FR 14113

On page 14117, HUD amends paragraph (B) (Period of Performance) of Section IV by removing the existing language and substituting new language. As amended, Section IV(B) now reads as follows:

(B) *Period of Performance.* The period of performance is 36 months. HUD reserves the right to approve no-cost time extensions for up to an additional 3 years based upon the submission of adequate justification by the grantee.

11. Brownfields Economic Development Initiative (BEDI), Beginning at 67 FR 14137

HUD amends paragraph (G)(4) of Section VI (Application Submission Requirements) on page 14147, first column, to add the requirement that Form HUD 40122, Section 8 Loan Guarantee, State Certifications Related to Nonentitlement Entities be submitted to HUD as part of the BEDI application package, along with the requirement to submit Form HUD–40076–EDI/BEDI, Rating Factor 4: Leveraging Resources/ Financial Need Sources and Uses Statement.

As amended, paragraph (G)(4) now reads:

(4) Rating Factor 4: Leveraging Resources. The response should include a completed copy of Form HUD–40076–EDI/BEDI, Rating Factor 4: Leveraging Resources/Financial Need Sources and Uses Statement and Form HUD 40122, Section 108 Loan Guarantee, State Certifications Related to Nonentitlement Entities.

At page 14154 of Appendix A, HUD adds Form HUD–40076–EDI/BEDI, Rating Factor 4: Leveraging Resources/ Financial Need Sources and Uses Statement and at page 14155 Form HUD–40122, Section 108 Loan Guarantee, State Certifications Related to Nonentitlement Entities.

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RATING FACTOR 4: LEVERAGING RESOURCES/FINANCIAL NEED
SOURCES & USES STATEMENT

Applicant: _____

Project Name/Title: _____

Sources	Amount	Uses	Amount
Federal		**Acquisition of Real Property**	
EDI or BEDI (circle one)		**Construction/Rehab**	
Section 108		(excl. infrastructure & remediation)	
CDBG		**Infrastructure**	
		Remediation	
		M&E	
		Working Capital	
State/Local		**Creation of Loan Fund for**	
		ED Activities	
		Project Delivery Costs	
		Contingency	
		Loan Loss Reserve	
		Land Writedown	
		Interest Rate Writedown	
Private (include debt financing)		**Credit Enhancements**	
Equity			
TOTAL:		**TOTAL:**	

Instructions: Fill in the dollar amounts corresponding to each project source in the **Amount** column on the left half of the table. Sources of funding not listed should be added under the relevant category (Federal, State/Local, Private). For each of the project uses (on the right half of the table), fill in the dollar amount to be spent in the **Amount** column. Add additional uses in the blank lines at the bottom of the Uses column.

form HUD-40076-EDI/BEDI (8/2004)

SECTION 108 LOAN GUARANTEE
State Certifications Related to Nonentitlement Public Entities

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Pursuant to 24 CFR §570.704(b)(9), the SECTION 108 LOAN GUARANTEE

State Certifications Related to Nonentitlement Public Entities

State of _____, with regard to the Section 108 Loan guarantee application submitted by the _____ (Nonentitlement Public Entity), certifies that:

(i) It agrees to make the pledge of grants required under 24 CFR §570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of the CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in 24 CFR §570.710.

_____
Signature

_____
Name

_____
Title

_____
Date (mm/dd/yyyy)

form **HUD-40122** (05/08/2002)

BILLING CODE 4210–32–C

12. Youthbuild, Beginning at 67 FR 14165

On page 14167, HUD amends Section VI (Application Selection Process) paragraph (B)(3)(a)(ii) to remove the word ''more'' and substitute in its place ''fewer.'' As amended, paragraph (B)(3)(a)(ii) now reads:

(ii) A county with an urban population of 20,000 inhabitants or fewer.

13. Resident Opportunities and Self-Sufficiency (ROSS), Beginning at 67 FR 14207

On page 14208, HUD amends paragraph (C)(2)(iii) of Section II (Amount Allocated) to read as follows:

(iii) The maximum amounts for CB grants are: $100,000 for CWROs per applicant, and $240,000 per applicant for all other eligible applicants. Applicants are required to allocate at least two-thirds of the total grant to direct funding of CB activities for site-based RAs/ROs and/or tribal ROs. CWROs are required to serve a minimum of 3 RAs. All other applicants are required to serve a minimum of 10 RAs. Tribes/TDHEs may serve a single tribal group.

On page 14208, HUD amends paragraph (C)(3)(a)(i) to read as follows:

(i) *Maximum grant amount.* For RSDM, the maximum grant amounts are as follows: For PHAs applying for family grants, the maximum grant application award will be based on the number of occupied family conventional public housing units. Tribes/TDHEs applying for RSDM should refer to section II(C)(3)(e) of this NOFA for computation of units for the maximum grant amount.

On page 14208, HUD amends paragraph (C)(3)(e) of Section II to read as follows:

(e) Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 2002 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Housing Act should count housing units under management that are owned and operated by the Tribe and are identified in their housing inventory as of September 30, 2001 for either family or elderly/disabled units.

On page 14208, HUD amends paragraph (i) of Section II(C)(4) to read as follows:

(i) This funding category provides grants for a targeted group of public housing residents who were beneficiaries of previously awarded ROSS grants, and/or public housing Family Self-Sufficiency participants funded through operating subsidy. This funding category recognizes the improved earning capacity of residents participating in self-sufficiency programs and provides the support necessary to achieve increased opportunities for homeownership for public housing residents through housing choice vouchers. Under this funding category, PHAs will receive grants for counseling and other supportive services to achieve homeownership for public housing residents. PHAs will design and develop homeownership supportive services for public housing residents. These supportive services shall comprehensively address the needs identified by the PHA for public housing families to obtain homeownership.

On page 14209, HUD amends paragraph (ii) of Section II(C)(5) to read as follows:

(ii) To update and expand existing technology centers, PHAs must use the number of occupied conventional family public housing units to determine the maximum grant amount in accordance with the categories listed below for families:

—For PHAs with 1 to 780 occupied family units, the maximum grant award is $50,000.
—For PHAs with 781 to 7,300 occupied family units, the maximum grant award is $100,000.
—For PHAs with 7,301 or more occupied family units, the maximum grant award is $200,000.

On page 14209, HUD amends paragraph (E) of Section II to read as follows:

(E) *Number of Applications Permitted.* PHAs applying for Service Coordinator Renewal grants under this program section of the SuperNOFA may apply for one renewal grant and three additional grants in the NN, HSS and RSDM funding categories, but may not apply for more than one grant in any one funding category. RO applicants may submit a total of two applications for RMBD and RSDM, but not more than one application in any one funding category. Nonprofit applicants may submit a total of two applications for CB and RSDM, but not more than one application in any one funding category under this ROSS competition. A PHA, RA, RO, or nonprofit may not submit an application to serve the same development. Please read each funding category carefully for additional limitations.

On page 14213, HUD amends paragraph (D)(1)(a) in Section II to read as follows:

(D) *Capacity Building.*

(1) *Eligible applicants.* (a) Intermediary Resident Organizations (IROs) and tribes/TDHEs on behalf of public or Indian housing residents, which include Public Housing Site-Based Resident Councils, Resident Organizations and Resident Management Corporations, may apply for Capacity Building (CB) grants. IROs include National Resident Organizations, Statewide Resident Organizations, Regional Resident Organizations, City-Wide Resident Organizations, and Jurisdiction-Wide Resident Organizations.

On page 14215, HUD amends paragraphs (F)(1) and (F)(2)(a) of Section III(F) to read as follows:

(1) *Eligible Applicants.* This funding category provides grants to PHAs for homeownership supportive services for public housing residents that were recipients of previously awarded ROSS grants and/or participate or participated in the public housing Family Self Sufficiency Program funded from the operating fund. Tribes/TDHEs are not eligible applicants for HSS.

(2) *Eligible participants and requirements.* Program participants must meet all of the following conditions:

(a) This funding category is targeted to the population of public housing residents that were recipients/beneficiaries of previously awarded ROSS grants between FY 1999 and FY 2000, and/or participate or participated in the public housing Family Self Sufficiency Program funded from the operating fund.

On page 14221, HUD amends paragraph (2) of Section V(D) to read as follows:

(2) *Factors for Award Used to Evaluate and Rate HSS Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA. The application kit contains a certification that must be completed for the applicant to be considered for RC/EZ/EC bonus points and a listing of federally designated RCs, EZs and ECs. In addition, a list of RCs, EZs, and ECs is attached to the General Section of the SuperNOFA as Appendix A–2 and is also available from the SuperNOFA Information Center, and the HUD web site, *www.hud.gov.* A HSS application must receive a total of 70 points out of 100 to be eligible for funding.

On page14229, HUD amends paragraph (b) of Section VI(E)(2) to read as follows:

(b) and/or participates or participated in a public housing family self-sufficiency program funded from operating subsidies.

14. Continuum of Care Homeless Assistance Programs, Beginning at 67 FR 14363

On page 14364, HUD corrects the final paragraph in Section II (Amount Allocated) to read as follows:

Under the FY 2002 HUD Appropriations Act, eligible Shelter Plus Care Program grants whose terms are expiring in calendar year 2003 and Shelter Plus Care Program grants that have been extended beyond their original five-year terms but which are projected to run out of funds in calendar year 2003 will be renewed for one year provided that they are determined to be needed by the Continuum of Care as evidenced by their inclusion on the priority chart. These projects must also meet the applicant and sponsor eligibility and capacity requirements described in Section V(A)(1) of this NOFA. However, these S+C renewal projects will not count against a continuum's pro rata need amount. On the other hand, no S+C renewal adjustment will be made to a Continuum of Care's pro rata need amount since these projects are being funded outside of the competition. Please be advised that Shelter Plus Care renewal applications which are not submitted as part of either a ''consolidated'' or ''associated'' Continuum of Care application will not be considered as eligible for funding. (See Section VI for a description of the three options for submitting applications.)

On page 14365, HUD corrects the first paragraph of Section III(A)(3) (Project Renewals) to read as follows:

(3) *Project renewals.* If your Supportive Housing or Shelter Plus Care grant will be expiring in calendar year 2003, or if your Shelter Plus Care Program grant has been extended beyond its original five-year term and is projected to run out of funds in calendar year 2003, you must apply under this Continuum of Care program section of the SuperNOFA to get continued funding.

15. Section 202 Supportive Housing for the Elderly, Beginning at 67 FR 14377

On page 14377, HUD amends the first paragraph under the heading ''Application Due Date'' in Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance) to read as follows:

Application Due Date. All mailed applications must be postmarked on or before midnight, local time, on June 5, 2002, and received by HUD within 15 days of the due date.

On page 14377, HUD amends Section I to add a new paragraph 5 under *Address for Submitting Applications* to read as follows:

5. Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office.

On page 14383, middle column, the Note at the end of paragraph III(D) is amended to read as follows:

Note: You may propose to rehabilitate an existing currently owned or leased structure that may or may not already serve elderly persons, except that the refinancing of any Federally funded or assisted project or project insured or guaranteed by a Federal agency is not permissible under this Section 202 NOFA. HUD does not consider it appropriate to utilize scarce program resources to refinance projects that have already received some form of assistance under a Federal program. For example, Section 202 or Section 202/8 direct loan projects cannot be refinanced with capital advances and project rental assistance.

On page 14385, HUD amends the first paragraph of Section V(C) (Ranking and Selection Procedures) and Section V(D) (Factors for Award Used to Evaluate and Rate Applications) on pages 14386 and 14387 to read as follows:

(C) *Ranking and Selection Procedures.* Applications submitted in response to the advertised metropolitan allocations or nonmetropolitan allocations that have a total base score (without the addition of RC/EZ/EC bonus points) of 70 points or more and meet all of the applicable threshold requirements of Section II(B) of the **General Section** of the SuperNOFA will be eligible for selection, and HUD will place them in rank order per metropolitan or nonmetropolitan allocation. These applications, after adding any bonus points for RC/EZ/EC, will be selected based on rank order, up to and including the last application that can be funded out of each HUD office's metropolitan or nonmetropolitan allocation. HUD Offices must not skip over any applications in order to select one based on the funds remaining. After making the initial selections in each allocation area, however, HUD may use any residual funds to select the next rank-ordered application by reducing the number of units by no more than 10 percent, rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of five units or less.

(D) *Factors For Award Used To Evaluate and Rate Applications.* HUD will rate applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements identified in Section VI(B) below. The maximum number of points an application may receive under this program is 102. This includes two RC/EZ/EC bonus points, as described in the General Section of the SuperNOFA.

On page 14387, paragraph (h) under Rating Factor 3 (Soundness of Approach) is amended to read as follows:

(h) **(−1 point)** Your application did not include a plan for getting your project to initial closing and start of construction within the initial fund reservation period of 18-months.

On page 14387, **Bonus Points,** which follows paragraph (e) under Rating Factor 5 (Coordination, Self Sufficiency and Sustainability) is amended to read as follows:

(2 bonus points) Location of proposed site in an RC/EZ/EC area, as described in the General Section of this SuperNOFA. Submit the information responding to the bonus points in accordance with the Application Submission Requirements in paragraph (B)(7)(i) of Section VI of this program section of the SuperNOFA.

On page 14389, HUD amends paragraph (B)(4)(c)(iv) of Section VI (Application Submission Requirements) to read as follows:

(4)(c)(iv) Describe your plan for getting your project to initial closing and start of construction within the initial 18-month term of the fund reservation (optional).

On page 14389, paragraph (4)(d)(i)(A) of Section VI(B), is amended to read as follows:

(A) Deed or long-term leasehold which evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at least 50 years with renewable provisions for 25 years.

On page 14391, HUD corrects paragraph (7)(i) of Section VI(B) to read as follows:

(7)(i) Certification of Consistency with the RC/EZ/EC Strategic Plan (HUD–2990). A certification that the project is consistent with the RC/EZ/EC strategic plan, is located within the RC/EZ/EC, and serves RC/EZ/EC residents. (This certification is not required if the project

site(s) will not be located in an RC/EZ/EC.)

On page 14396, Appendix B, Table of Contents, HUD amends item 7 (i) of the Table of Contents to read: ''(i) Certification of Consistency with the RC/EZ/EC Strategic Plan (HUD–2990)''.

On page 14397, Appendix B, HUD replaces the Application for Capital Advance Summary Information form with Form HUD–92015–CA, Supportive Housing for the Elderly, Section 202, Application for Capital Advance Summary Information.

BILLING CODE 4210–32–P

Supportive Housing for the Elderly Section 202

Application for Capital Advance Summary Information

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0267
(exp.7/31/2002)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

HUD Use Only	202 Project Number	PRAC Number

1. Sponsor's Name(s), Address(es) & Telephone Number (s)

1a. Sponsor is a "grassroots" organization ☐ Yes ☐ No

2. Minority Sponsor Designation. A minority sponsor is one in which at least 51 percent of the board members are minority.
Is this sponsor a minority applicant? ☐ Yes ☐ No

If "Yes," place the numeric code as shown below in this box ☐

Codes: 2 - Black; 3 - Native American; 4 - Hispanic; 5 - Asian Pacific; 6 - Asian Indian

3a. Address of Site

3b. Will project be located within the boundaries of a Federally-designated: (1) Empowerment Zone, (2) Enterprise Community, (3) Urban Enhanced Enterprise Community, (4) Strategic Planning Community, or (5) Renewal Community?
(Contact local HUD Office for information on these designated areas.)
☐ Yes ☐ No
If "Yes," please place the appropriate number as shown above in this box ☐

4a. Congressional District

4b. Census Tract

5. Type of Area
☐ Metropolitan
☐ Non-metropolitan

6. Capital Advance Amount Requested
$

7. Project Rental Assistance Contract Amount Requested
$

8. Total No. of 202 Units

8a. Number & Type of Resident Units Proposed
☐ Efficiency ☐ One bedroom

8b. Resident Manager's Unit (check appropriate type)
☐ Efficiency ☐ One bedroom ☐ Two bedroom

9. Number of Buildings

10. Type of Project
☐ New Construction
☐ Rehabilitation
☐ Acquisition
Year Built (yyyy) ☐

11. Type of Building(s)
☐ Row/Townhouse ☐ Semi-detached
☐ Walk-up ☐ Detached
☐ Elevator

12. Number of Stories

13. Number of Parking Spaces

14. Check utilities and services not included in the rent and to be paid directly by the tenant.
☐ Electric ☐ Water ☐ Heat ☐ Gas

15. Off-Site Facilities

	Public	At Site	Feet from Site
Water	☐	☐	
Sewer	☐	☐	
Paving	☐	☐	
Gas	☐	☐	
Electric	☐	☐	

16a. Community Spaces to be included in Project

16b. Mixed-Finance or Mixed-Use Project For Additional Units
☐ Yes ☐ No
No. of Additional Units _____

17. Unusual Site Features
☐ None ☐ Poor Drainage
☐ Cuts ☐ Retaining Walls
☐ Fill ☐ Rock Foundations
☐ Erosion ☐ High Water Table
☐ Other (specify)

18. Mark one box
☐ Consultant
☐ Agent
☐ Authorized Representative

Name, Address & Telephone Number

19. If Sponsor is applying for more than one HUD program from the SuperNOFA, indicate which application(s) contain the forms with original signatures.

Program Name	Form

20. Sponsor's Attorney (name, address & telephone number)

By (Signature of Sponsor's Authorized Representative)

Type in Name

Type in Title

Date (mm/dd/yyyy)

Previous editions are obsolete

form **HUD-92015-CA** (04/2002)
ref: Handbook 4571.3 Rev-1

BILLING CODE 4210–32–C

16. Section 811 Supportive Housing for Persons With Disabilities, Beginning at 67 FR 14423

On page 14423, HUD amends the first paragraph under the heading ''Application Due Date'' in Section I (Application Due Date, Application Kits, Further Information, and Technical Assistance) to read as follows:

Application Due Date. All mailed applications must be postmarked on or before midnight, local time, on June 5, 2002, and received by HUD within 15 days of the due date.

On page 14423, HUD amends Section I to add a new paragraph 5 under *Address for Submitting Applications* to read as follows:

5. Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office.

On page 14427, HUD amends the chart labeled ''Fiscal Year 2002 Allocations for Supportive Housing for Persons with Disabilities'' by adding an asterisk (*) next to the entry for ''Los Angeles Hub'' with a footnote to read as follows:

* This amount includes $518,500 in capital advance authority to fund Therapeutic Living Centers for the Blind of West Hills, California. Since this 6-unit project was not selected in FY 2001 due to HUD error, the application will be funded from the FY 2002 allocation to the Los Angeles Office.

On page 14428, middle column, the **Note** at the end of Section III(C) is amended to read as follows:

Note: You may propose to rehabilitate an existing currently owned or leased structure that may or may not already serve persons with disabilities, except that the refinancing of any Federally funded or assisted project or project insured or guaranteed by a Federal agency is not permissible under this Section 811 NOFA. HUD does not consider it appropriate to utilize scarce program resources to refinance projects that have already received some form of assistance under a Federal program. (For example, Section 202, Section 202/8 or Section 202/PAC direct loan projects cannot be refinanced with capital advances and project rental assistance.)

On page 14431, HUD amends the first paragraph of Section V(C) (Ranking and Selection Procedures) and Section V(D) Factors for Award Used To Evaluate and Rate Applications to read as follows:

(C) *Ranking and Selection Procedures.* Applications that have a total base score of 70 points or more (without the addition of RC/EZ/EC bonus points) and meet all of the applicable threshold requirements of Section II(B) of the **General Section** of the SuperNOFA will be eligible for selection and will be placed in rank order. HUD will select applications, after adding any bonus points for RC/EZ/EC, based on rank order, up to and including the last application that can be funded out of each HUD Office's allocation. HUD Offices must not skip over any applications in order to select one based on the funds remaining. After making the initial selections, however, HUD may use any residual funds to select the next rank-ordered application by reducing the number of units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. For this purpose, however, HUD will not reduce the number of units in projects of five units or less.

(D) *Factors For Award Used To Evaluate and Rate Applications.* HUD will rate applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements in Section VI(B) below. The maximum number of points an application may receive under this program is 102. This includes two (2) EZ/EC/RC bonus points, as described in the General Section of this SuperNOFA.

On page 14433, **Bonus Points,** which follows paragraph (f) under Rating Factor 5: (Coordination, Self-Sufficiency and Sustainability) is amended to read as follows:

(2 bonus points) Location of proposed site in an RC/EZ/EC area, as described in the **General Section** of this SuperNOFA. Submit the information responding to the bonus points in accordance with the Application Submission Requirements in paragraph (B)(7)(i) of Section VI of this program section of the SuperNOFA.

On page 14433, HUD amends paragraph (f) of Rating Factor 3 (Soundness of Approach) to read as follows:

(f) **(−#1 point)** Your application did not include a plan for getting your project to initial closing and start of construction within the initial fund reservation period of 18 months.

On page 14435, HUD amends paragraph (B)(4)(c)(iv) of Section VI (Application Submission Requirements) to read as follows:

(4)(c)(iv) Describe your plan for getting your project to initial closing and start of construction within the initial 18-month term of the fund reservation (optional).

On page 14435,paragraph (4)(d)(i)(A) of Section VI(B) is amended to read as follows:

(A) Deed or long-term leasehold which evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at lease 50 years with renewable provisions for 25 years.

On page 14438, HUD corrects paragraph (7)(i) of Section VI(B) to read as follows:

(7)(i) Certification of Consistency with the RC/EZ/EC Strategic Plan (HUD–2990) A certification that the project is consistent with the RC/EZ/EC strategic plan, is located within the RC/EZ/EC, and serves RC/EZ/EC residents. (This certification is not required if the project site(s) will not be located in an RC/EZ/EC.)

On page 14439, APPENDIX A: LOCAL HUD OFFICES, HUD adds a new paragraph (6) under **Notes** to read as follows, and corrects the addresses for several local HUD Offices as indicated below:

(6) Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office. HUD also corrects the addresses and/or telephone numbers of the following local HUD Offices:

HUD—Boston Hub

Manchester Office: Telephone number (603) 666–7510. The TTY number and address remain unchanged.

HUD—Baltimore Hub

Richmond Office: Third Floor, 600 East Broad Street, Richmond, VA 23219–1800. Telephone number (804) 771–2100, TTY number (804) 771–2038.

HUD—Atlanta Hub

Louisville Office: 601 West Broadway, Louisville, KY 40202. The telephone and TTY numbers remain unchanged.

HUD—Minneapolis Hub

Minneapolis Office: Suite 1300, 920 Second Avenue, South, Minneapolis, MN 55402–4012. The telephone and TTY numbers remain unchanged.

San Francisco Hub:

Honolulu Office: Suite 3A, 500 Ala Moana Boulevard, Honolulu, HI 96813. The telephone and TTY numbers remain unchanged.

Dated: May 14, 2002.

Vickers B. Meadows,

Assistant Secretary for Administration.

[FR Doc. 02–12599 Filed 5–17–02; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–02–6332–AA: GP02–0001]

Temporary Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Land Closure.

SUMMARY: Notice is hereby given that except for walking, hiking and pedestrian sightseeing, certain public lands in Lane County, Oregon are temporarily closed to all public use, including driving, parking, camping, discharge of firearms, and all equestrian uses, from October 8, 2001 through November 30, 2002.

DATES: This closure is effective from October 8, 2001 through November 30, 2002.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P. O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Pat Johnston, Wetlands Project Manager, Eugene District Office, at (541) 683–6181.

SUPPLEMENTARY INFORMATION: The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure are specifically identified as follows:

Federal lands located in Section 29, Township 17 south, Range 4 West of the Willamette Meridian, Oregon, more generally described as follows: All federal lands within the City of Eugene Urban Growth Boundary located in Section 29, Township 17 South, Range 4 West of the Willamette Meridian lying east of Greenhill Road, South of Royal Ave., west of Terry street and a line running South from the end of Terry Street to the Southern Pacific Railroad tracks, and north of the Southern Pacific Railroad tracks.

Containing approximately 200 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau, City of Eugene, and Corps of Engineers employees; state, local and federal law enforcement and fire protection personnel; agents for the Cone wetland mitigation sites; the contractor authorized to construct the Lower Amazon Wetland Restoration Project and its subcontractors; the contractor authorized by the City of Eugene to construct the Fern Ridge Bicycle Path and related recreation facilities and its subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate construction of the Lower Amazon Wetland Restoration Project and Fern Ridge Bicycle Path and related facilities, and protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lower Amazon Wetland Restoration and Fern Ridge Bicycle Path construction projects.

Dated: September 28, 2001.

J.O.I. Williams,

Acting Coast Range Field Office Manager.

[FR Doc. 02–12586 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6334–AA; GP2–0195]

Roseburg District Bureau of Land Management Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notices for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include operating procedures, evaluation criteria for projects, technical details for projects under Title II of the Act, facilitation needs, as well as future meeting dates.

DATES: 9 a.m. to 4 p.m., on June 10 and 24, July 22 and 29, August 13, 19, and 26 and there will be a field trip on July 8, 2002.

ADDRESSES: The Roseburg Resource Advisory Committee will meet at the BLM Roseburg District Office, 777 N.W. Garden Balley Boulevard, Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affair Officer, Roseburg District Office, 777 Garden Valley Blvd, Roseburg, Oregon 97470, or *elynn_burkett@blm.gov,* or on the web at *www.or.blm.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grand Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

Dated: April 17, 2002.

Cary Osterhaus,

Roseburg District Manager.

[FR Doc. 02–12580 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–PB–252Z]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. Appendix, notice is hereby given that the next two meetings of the Front Range Resource Advisory Council (Colorado) will be held on July 16, 17, 2002 and September 18, 2002 in Canon City, Colorado.

The meeting on July 16, 2002 is scheduled to begin at 10 a.m. and will be a Tour of the Gold Belt Travel Management Area which will begin and end at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. The meeting will continue the following day, July 17, 2002 at 9:15 a.m. and will also be at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include discussion and updates on fire management, travel management and other current public land issues.

The meeting on September 18, 2002 will begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include discussion of several public land management topics including Gold Belt Travel Management and RAC reports.

All Resource Advisory Council meetings are open to the public although the public may need to provide their own transportation for the Tour on July 16. Interested persons may make oral statements to the Council at 9:30 a.m. on July 17, 2002 and September 18, 2002 or written statements may be submitted for the Council's consideration. The Center Manager or Council Chair may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The two meetings are scheduled for Tuesday, July 16, 2002 from 10 a.m. to 4 p.m. and will continue Wednesday, July 17, 2002 from 9:15 a.m. to 4 p.m. and September 18, 2002 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center Office, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: For further information contact Ken Smith at (719) 269–8500.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: May 2, 2002.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 02–12581 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Upper Snake River District Resource Advisory council meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Location and Times.

SUMMARY: The next Upper Snake River District Resource Advisory Council (RAC) Meeting will be held on May 29, 2002, beginning at 1 p.m.; and May 30, 2002, beginning at 8 a.m. The meeting will be held at the Wood River Lodge, 391 2nd Avenue North, in Ketchum, Idaho.

FOR FURTHER INFORMATION CONTACT: David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

Dated: April 4, 2002.

LeRoy Cook,

Acting District Manager.

[FR Doc. 02–12582 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–5882–PB–MX01; HAG02–0189]

Notice of Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The Medford District Resource Advisory Committee will meet in Medford to tour project sites and to discuss proposed 2003 projects. Agenda topics include on-site inspections of 2002 projects and proposed 2003 projects, review of last meeting minutes, presentations on proposed fiscal year 2003 Title II projects, and discussion regarding proposed projects.

DATES: July 11, 2002, August 8, 2002, August 22, 2002, and August 25, 2002. The field trips on July 11, 2002 and August 25, 2002 will begin at 7 a.m. The meetings on August 8, 2002 and August 22, 2002 will begin at 10 a.m. A public comment period will be held from 2 p.m. to 2:30 p.m. The field trips and meetings are expected to adjourn at 4 p.m.

ADDRESSES: The field trips will start from, and the meetings will be held at, the Medford District Office, located at 3040 Biddle Road, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Karen Gillespie, Medford District Office (541–618–2424).

Dated: April 15, 2002.

Ron Wenker,

District Manager.

[FR Doc. 02–12585 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–6333–PF; GP2–0192]

Salem Oregon Bureau of Land Management Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Salem Oregon BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Salem BLM Resource Advisory Committee include: review 2003 project applications and develop criteria for and select 2003 projects, identification of opportunities for future field trips.

DATES: 9 a.m. to 3 p.m., on July 11, July 12 and August 15, 2002.

ADDRESSES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the

Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Rd. SE, Salem, Oregon 97306. (503–375–5657).

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

Dated: April 19, 2002.

Denis Williamson,

District Manager.

[FR Doc. 02–12618 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–02–1220–JG–064B]

The Interim Closure to Motorized Vehicle Use of Selected Routes Within the Western Rand Mountains Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, United States Department of the Interior.

ACTION: Temporary closure to motorized vehicle use of BLM routes R5, R50, R40, R15, R25, R35, R37, R12 and R48, and all other unauthorized routes and trails, within the Western Rand Mountains ACEC in Kern County, California.

EFFECTIVE DATE: This closure is effective March 29, 2002 and will remain in effect until a Record of Decision is signed on the West Mojave Plan, which is expected to be signed by June 2003.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Bureau of Land Management, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest CA 93555, (760) 384–5405. The closure is posted in the Ridgecrest Field Office and at places near and/or within the area to which the closure applies. Maps identifying the affected areas are available at the Ridgecrest Field Office as well as on the Bureau of Land Management (BLM) California website at *www.ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This temporary closure is implemented pursuant to 43 CFR 8341.2 (Special rules governing the use of off highway vehicles on public lands). The closure was approved on March 29, 2002 and will remain in effect until a Record of Decision is signed on the West Mojave Plan, which is expected to be signed by June 2003. The ACEC will remain open for all other non-motorized uses currently allowed under 43 CFR. Maps showing the affected area are available by contacting the Ridgecrest Field Office. All designated routes entering the ACEC will be posted with public notices and standard motorized vehicle closure signs. Management fences and/or barriers will be installed at key access points to block entry by motorized vehicles.

This closure order is issued to provide for the protection of the desert tortoise and desert tortoise critical habitat within the Western Rand Mountains ACEC. This interim closure was made necessary by the high incidence of noncompliance exhibited by public land visitors willfully operating off highway vehicles on closed routes and traveling cross country within the ACEC. Recent surveys show that over 90% of the closed routes in the ACEC are being ridden regularly by visitors operating off highway vehicles. Visitor compliance with the designated route system is essential to protect the desert tortoise, a species listed as threatened under the Endangered Species Act.

Exemptions to this closure include vehicles conducting official government business which shall be allowed on closed routes and areas as authorized. Official government business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Ridgecrest Field Office Manager.

Authority: 43 CFR subparts 8341.2 (Special rules) and 8364.1 (Closure and restriction orders). Any person who violates this closure order may be subject to a fine, not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: March 21, 2002.

Hector A. Villalobos,

Field Office Manager.

Closure Order

Notice is hereby given that effective March 29, 2002, BLM Routes R5, R50, R40, R15, R25, R35, R37, R12, and R48, and all other unauthorized routes and trails, in the Western Rand Mountain Area of Critical Environmental Concern (ACEC) are closed to all motorized vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in the area located within the closure signs.

This closure order is issued to provide for the protection of the desert tortoise and desert tortoise critical habitat within the Western Rand Mountains ACEC. This interim closure was made necessary by the high incidence of noncompliance exhibited by visitors willfully operating off highway vehicles on closed routes and traveling cross country within the ACEC. Recent surveys show that over 90% of the closed routes in the ACEC are being ridden regularly. Visitor compliance with the designated route system is essential to protect the desert tortoise, a species listed as threatened under the Endangered Species Act. The ACEC will remain open for all other non-motorized uses currently allowed under 43 CFR.

The authority for this closure is found in 43 CFR Subparts 8341.2 (Special rules) and 8364.1 (Closure and restriction orders). Any person who violates this closure order may be subject to a fine, not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Exemptions to this closure include vehicles conducting official government business which shall be allowed on closed routes and areas as authorized. Official government business may include public service emergencies, resource monitoring/research, and management activities, and other actions authorized by BLM's Ridgecrest Field Office Manager.

The closure will remain in effect until rescinded by the Ridgecrest Field Office Manager.

Dated: March 29, 2002.

Hector A. Villalobos,

Ridgecrest Field Office Manager.

[FR Doc. 02–12587 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR128–6332 02–0121]

Road Closure to Motorized Public Access

AGENCY: Bureau of Land Management, U.S. Department of Interior.

ACTION: Notice of road closure.

SUMMARY: Closure of 0.46 miles of Bureau of Land Management (BLM) Road No. 29–11–24.0 to motorized public access, which is within Township 29 South, Range 11 West, Sections 23 and 24, Williamette Meridian, in the Coos Bay District, Coos County, Oregon. This action is intended to prevent unauthorized entry of motorized vehicles onto meadow areas which can be accessed using BLM Road No. 29–11–24.0, while continuing to allow for pedestrian, equestrian and bicycle use of the road.

EFFECTIVE DATE: Road closure is effective immediately and extends indefinitely.

ADDRESSES: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon, 97459.

FOR FURTHER INFORMATION CONTACT: Stephan R. Samuels, Team Lead, (541) 751–4244.

SUPPLEMENTARY INFORMATION: This action is being taken at the request of the Coquille Indian Tribe, to prevent further degradation of culturally-sensitive meadow areas on the Coquille Forest which can be accessed by motorized vehicle from BLM Road No. 29–11–24.0. Exceptions to this closure include motorized vehicle use for administrative and emergency purposes and for permittees. The authorized officer may issue a permit allowing motorized vehicle access into the area for specific purposes. This closure order is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and 43 CFR 8364.1.

Dated: March 26, 2002.

Mark E. Johnson,

Acting Coos Bay District Manager.

[FR Doc. 02–12584 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–66122]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, proposes to withdraw approximately 40.84 acres of public land for 20 years to protect an Administrative Facility. This notice closes this land to operation of the public land laws and to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before August 19, 2002.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On, April 18, 2002, a petition was approved allowing the Bureau of Land management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights.

Sixth Principal Meridian

T. 7 N., R91 W.,

Sec. 8, lot 15.

The area described contains 40.84 acres of public land in Moffat County.

The purpose of this withdrawal is to protect facilities which will be constructed to house the Hotshot Fire Crew recently assigned to the Little Snake Field Office.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, may present their views in writing to the Colorado State Director. If it is determined that a public meeting should be held, the public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the meeting would be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 02–12583 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Assessment, Saugus Iron Works National Historic Site, Essex County, MA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of General Management Plan/Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service Policy, this notice announces the pubication of the General Management Plan/Environmental Assessment for Saugus Iron Works National Historic Site, Essex County, Massachusetts. In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental assessment was prepared to assess the impacts of implementing the general management plan, and as a result of that analysis, a Finding Of No Significant Impact has been issued.

The General Management Plan/ Environmental Assessment identifies the Preferred Alternative and assesses the potential environmental, cultural and socioeconomic effects of the actions presented on site resources, visitor experience, and the surrounding area. The Preferred Alternative involves (a) rehabilitating the interior of the museum building to allow for compliance with NPS museum exhibit standards and consolidating the museum collections and archival materials in existing residences that would be adaptively reused to house these resources under appropriate climate controlled and protective systems, (b) removing existing maintenance facilities, restoring their current locations and consolidating them into a single facility, (c) adaptively reusing the Iron Works House Annex and Lean-to into a visitor contact facility, and d) improving access through the iron works structures and between those structures and the Iron Works House and Museum for persons with disabilities and special needs.

DATES: The General Management Plan/ Environmental Assessment and FONSI are now available.

SUPPLEMENTARY INFORMATION: Copies of the document are available at the following locations: Saugus Iron Works National Historic Site-Visitor Kiosk, 244 Central Street, Saugus, MA 01906. The visitor kiosk is open everyday from 9 a.m. to 5 p.m. The Saugus Public Library, 295 Central Street Saugus, MA. The library is open Monday through Thursday from 8:30 a.m. to 8:30 p.m.; Friday hours are 8:30 am until noon. The library is closed on weekends.

To request a copy of the document, please call (781) 233–0050, fax (781–231–7345), or write Superintendent, Saugus Iron Works National Historic Site 244 Central Street, Saugus, MA 01906.

Bob McIntosh,

Associate Regional Director, Planning, Resources Stewardship and Science, Northeast Region.

[FR Doc. 02–12564 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 3, 2002.

The Commission was established pursuant to Public Law 99–420, § 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held February 4, 2002
2. Committee reports:
   —Land Conservation
   —Park Use
   —Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, September 9, 2002.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: April 17, 2002.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 02–12557 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions will be held on Wednesday, June 26, 2002, and Thursday, June 27, 2002, at the U. S. Fish and Wildlife Service Office in Kotzebue, Alaska.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues.

The following agenda items will be discussed:

1. Call to order (SRC Chairs).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chairs and Superintendent's Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from last meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Old Business:

(a) October 2001 Chairs Workshop Report.

(b) Status of Hunting Program Recommendations.

(c) Customary Trade.

10. Review Federal Wildlife and Fisheries Management Regulatory Actions.
11. Public and Agency Comments.
12. Work Session (comment on issues, develop new recommendations, prepare letters).
13. Set time and place of next SRC meeting.

Adjournment

DATES: The meeting will be held from 9 a.m. to 5 p.m. on Wednesday, June 26, 2002 and Thursday, June 27, 2002.

ADDRESSES: The meeting will be held at the U.S. Fish and Wildlife Service Office (Conference Room) in Kotzebue, Alaska, Telephone (907) 442–3799.

FOR FURTHER INFORMATION CONTACT: Persons who want further information concerning the meeting may contact Superintendent David W. Spirtes at P.O. Box 1029, Kotzebue, Alaska 99752, at (907) 442–8301 or 800—478–7252 or Ken Adkisson, Subsistence Manager, at (907) 443–6104 or 800–471–2352.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operation in accordance with the provisions of the Federal Advisory Committees Act. Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent—National Park Service, P.O. Box 1029, Kotzebue, Alaska 99752, Telephone (800)—478–7252.

Judith C. Gottlieb,

Acting Regional Director, National Park Service, Alaska Region.

[FR Doc. 02–12565 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Saturday, June 1, 2002 at 8 a.m.

Address: Grey Towers, Pinchot Institute, Milford PA 18337.

The agenda will include reports from Citizen Advisory Commission members, specifically approval of minutes from the June 9 and October 11, 2001, and January 26 and April 13, 2002 meetings, election of Commission officers for the 2002–2003 term, and attendance of Commission members. Superintendent William Laitner will give a report on various park issues. The agenda is set up to invite the public to bring issues of interest before the Commission. These issues typically include treatment of historic buildings within the recreation area, monitoring of waste water facilities outside the recreation area but empyting into the Delaware River, and wildlife management issues.

Meeting Date and Time: Saturday, October 5, 2002 at 9 a.m.

Address: Walpack Environmental Education Center, Walpack, New Jersey 07881.

The agenda for this meeting will consist of Commission reports which typically include natural resources, recreation, and historic structures. The Superintendent will provide reports on park issues such as the Tri-State Wastewater Planning project and the

New Jersey Swim Beach development. The agenda is set up to invite the public to bring issues of interest before the Commission.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: April 15, 2002.

Doyle W. Nelson,

Superintendent.

[FR Doc. 02–12573 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Gates of the Arctic National Park Subsistence Resource Commission (SRC) Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Gates of the Arctic National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gates of the Arctic National Park Subsistence Resource Commission will be held on Wednesday, September 25, 2002 and Thursday, September 26, 2002, at Sophie Station Hotel in Fairbanks, Alaska. The proposed meeting provides the Commission an opportunity to continue work on the subsistence hunting program recommendations and other related subsistence management issues. The public is invited to comment on the proposed agenda topics.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from SRC work session.
6. Review Commission Purpose.
7. Status of Membership.
8. Election of SRC Chair and Vice Chair.
9. Superintendent's Report
10. Gates of the Arctic NP& P Staff Report
(a) Backcountry/Wilderness Planning Initiative.
(b) Community Oral History Project.
11.Federal Subsistence Board Update
(a) Wildlife Management Proposals and Issues
(b) Fisheries Management Proposals and Issues
(c) Customary Trade
(d) Regional Council Update
(1) Northwest Arctic Regional Advisory Council
(2) Western Interior Regional Advisory Council
12. Public and Agency Comments
13. Work Session (comment on issues, develop new recommendations, prepare letters).
14. Set time and place of next SRC meeting.
15. Adjournment

DATES: The meeting will begin at 9 a.m. on Wednesday, September 25, 2002, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Thursday, September 26, 2002, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

ADDRESSES: The meeting will be held at the Sophie Station Hotel, 1717 University Avenue, Fairbanks, Alaska 99709, and telephone (907) 479–3650.

Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

FOR FURTHER INFORMATION CONTACT: Persons who want further information concerning the meeting may contact Superintendent Dave Mills or Fred Andersen, Subsistence Manager, at Gates of the Arctic National Park and Preserve, 201 First Avenue, Fairbanks, AK, 99701, telephone (907) 457–5752.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent Gates of the Arctic National Park and Preserve, 201 First Avenue, Fairbanks, AK, 99701, telephone (907) 457–5752.

Robert L. Arnberger,

Regional Director, National Park Service, Alaska Region.

[FR Doc. 02–12563 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History of New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History that meets the definition of ''unassociated funerary object'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a wooden hat carved in the shape of a seagull with wings and tail of hide. The seagull is painted in red, black, and blue; has a hawk carved into its breast; and has copper eyebrows. The wings and tail have been printed with a design of bear's heads.

At an unknown date, George Thorton Emmons acquired the seagull hat as part of a set of implements from a grave house of the ''Hootz-ar-tar qwan,'' near Angoon, AK. In 1894, the American Museum of Natural History acquired this seagull hat from Mr. Emmons and accessioned the item into its collection the same year.

The cultural affiliation of this item is Hutsnuwu (''Hootz-ar-tar qwan'') Tlingit as indicated through museum records and consultation with representatives of the Central Council of the Tlingit and Haida Indian Tribes of Alaska. The Central Council of the Tlingit and Haida Indian Tribes of Alaska has filed a claim for this cultural item on behalf of the Deisheetaan clan of the Hutsnuwu Tlingit, for which the seagull is said to be a crest.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this item and the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

This notice has been sent to officials of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, Sealaska Corporation; Kootznoowoo, Incorporated; and Angoon Community Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Elaine Guthrie, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769-5835 before June 19, 2002. Repatriation of this object to the Central Council of the Tlingit and Haida Indian Tribes of Alaska may begin after that date if no additional claimants come forward.

Dated: February 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–12558 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum professional staff in consultation with the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lower Lake Rancheria; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

In 1954, human remains representing at least one individual were removed during excavations at CA-Lak-203, on the north shore of Clear Lake, Lake County, CA, and were donated to the Phoebe A. Hearst Museum of Anthropology by Raymond Oechsli. No known individual was identified. The one funerary object is a piece of worked bone.

The presence of clamshell disk beads and historic-period trade beads in the assemblage of materials from other areas of the site indicates that occupation of CA-Lak-203 dates to post-A.D. 1500. Linguistic and archeological evidence indicates that Pomo people moved into the region of Lake County, CA by circa 5000 B.C. and have occupied the region since that time. The preponderance of the available evidence indicates that the human remains are culturally affiliated with Pomo groups whose traditional territories include CA-Lak-203: Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lower Lake Rancheria; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

Based on the above-mentioned information, officials of the Phoebe Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland

Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lower Lake Rancheria; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

This notice has been sent to officials of the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lower Lake Rancheria; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before June 19, 2002. Repatriation of the human remains and associated funerary objects to the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lower Lake Rancheria;Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California may begin after that date if no additional claimants come forward.

Dated: April 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc.02–12560 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum professional staff in consultation with the Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of the Round Valley Reservation, California.

In 1952, human remains representing at least one individual were removed during excavations at site CA-But-48, Butte County, CA, by Mr. and Mrs. A.B. Elsasser and J.A. Bennyhoff of the University of California, Berkeley, and were donated to the Phoebe A. Hearst Museum of Anthropology by Charles Collier the same year. No known individuals were identified. The 15 associated funerary objects are saddle olivella beads, whole olivella beads, and clamshell disc beads.

In 1956, human remains representing at least one individual were recovered during excavations at site CA-Teh-210, Tehama County, CA, by A.B. Elsasser and J.A. Bennyhoff of the University of California, Berkeley, and were accessioned into the Phoebe A. Hearst Museum of Anthropology the same year. No known individual was identified. The 89 funerary objects are clamshell disc beads, olivella beads, pine seed beads, and a steatite bead.

The presence of clamshell disk beads among the associated funerary objects from CA-But-48 and CA-Teh-210 indicate that both sites were occupied during the Protohistoric period, post-A.D. 1500. Archeological and linguistic evidence indicates that the Maidu peoples, represented by the Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of the Round Valley Reservation, California moved into north-central California by circa A.D. 1400.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of

at least two individuals of Native American ancestry. Officials of the Phoebe Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 104 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of the Round Valley Reservation, California.

This notice has been sent to officials of the Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of the Round Valley Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before July 19, 2002. Repatriation of the human remains and associated funerary objects to the Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of the Round Valley Reservation, California may begin after that date if no additional claimants come forward.

Dated: April 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–12561 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, National Park Service, Statue of Liberty National Monument, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of the inventory of human remains and associated funerary objects presently in the control of the U.S. Department of the Interior, National Park Service, Statue of Liberty National Monument, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park unit that has control or possession of these Native American human remains and associated funerary objects. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial, anthropological, and archeological staff; contracted specialists in physical anthropology; and representatives of the Delaware Nation, Oklahoma and the Delaware Tribe of Indians, Oklahoma. The National Park Service also consulted with the Stockbridge-Munsee Community of Mohican Indians of Wisconsin and the non-Federally recognized Delaware Nation Grand Council of Oklahoma (consisting of representatives of the Delaware Nation and the Delaware Tribe of Indians of Oklahoma, and the Moravian of the Thames First Nation and the Munsee-Delaware Nation of Canada).

In 1963, human remains representing a minimum of one individual were recovered from Liberty Island (also known as Bedloe's Island), during the restoration of Fort Wood. The human remains were recovered from strata located four feet below the present ground level. No associated funerary objects are present. The identity of this individual could not be determined.

Between 1985-1987, human remains representing a minimum of four individuals were recovered from Ellis Island during restoration of the main building of the Immigration Station. The human remains were recovered at a depth of 3.5 to 4 feet below the present ground level from both a prehistoric shell stratum and a disturbed area associated with the prehistoric shell midden. It is believed that the disturbance is related to construction of the Main Building that occurred in the 1890s. No items were found that appear to have been intentionally placed with these human remains at the time of death. A sage bundle placed at the site in 1987, and now in the monument's collections, was intentionally placed near the human remains as part of a death rite or ceremony of a culture. No known individuals were identified.

In 1986, human remains representing a minimum of one individual were recovered from another location on Ellis Island during construction of a water line. The human remains were recovered from a disturbed area believed to have been used as fill during the 20th Century. No associated funerary objects are present. The identity of this individual could not be determined.

The remains of all six individuals were reviewed for indications of Native American ancestry. Characteristics of the remains of two individuals recovered during the renovation of the Immigration Station and one individual recovered during the construction of the water line are indicative of Native American ancestry. Traits indicative of non-Native American ancestry were not noted on any of the remains recovered from Ellis Island; and traits from the Liberty Island remains could not be evaluated in this respect due to the lack of comparative data.

The remains of five individuals appear to have been originally associated with prehistoric shell middens. Remains of the four individuals associated with the Immigration Station were recovered from intact prehistoric shell matrices, and from disturbed oyster shell/sand and clay contexts believed to have been obtained from prehistoric strata underlying the Immigration Station. It is apparent from the contexts and condition of archeological removals that the remains were present while the area was still being used to procure shellfish.

Previous archeological excavations have shown that shell middens were commonly used as burial areas during the Middle Woodland (0 AD to 1000 AD) and Late Woodland (1000 AD to 1600) periods. The presence of pottery in the Ellis Island strata suggests a similar time frame of late Middle Woodland to Late Woodland occupation. A radiocarbon assay of charcoal from the base of the Ellis Island shell midden dates occupation of the lowest level of that site to A.D. 801-949. The human remains recovered from the context of the shell middens on the two islands are believed to have been interred between A.D. 801-1600.

Historical documentation indicates that in A.D. 1600 the area around Statue of Liberty National Monument was occupied by Algonquian-speaking peoples, including the Munsee Delaware peoples. Archeological excavations throughout the mid-Atlantic region reveal a continuity of material

culture through time indicative of a relationship of shared group identity between the Munsee Delaware peoples and the Middle Woodland and Late Woodland period populations of the area. Representatives of the Delaware Nation Grand Council have identified the Statue of Liberty National Monument as being within the traditional territory of their constituent tribes.

Based on the above-mentioned information, the superintendent of Statue of Liberty National Monument determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least six individuals of Native American ancestry. The superintendent of Statue of Liberty National Monument also determined that, pursuant to 43CFR 10.2 (d)(2), the one item listed above is reasonably believed to have been placed with or near individual human remains as part of a death rite or ceremony. Lastly, the superintendent of Statue of Liberty National Monument has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these human remains and the associated funerary object and the Delaware Nation, Oklahoma; the Delaware Tribe of Indians, Oklahoma; and the Stockbridge-Munsee Community of Mohican Indians of Wisconsin.

This notice has been sent to officials of the Delaware Tribe of Indians, Oklahoma; the Delaware Nation, Oklahoma; the Stockbridge-Munsee Community of Mohican Indians of Wisconsin; and to officials of the non-Federally recognized Delaware Nation Grand Council of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Diane H. Dayson, Superintendent, Statue of Liberty National Monument, Liberty Island, New York, NY 10004; telephone; (212) 363-7772, before June 19, 2002. Repatriation of the human remains and associated funerary object to the Delaware Tribe of Indians, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge-Munsee Community of Mohican Indians of Wisconsin may begin after that date if no additional claimants come forward.

Dated: April 16, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–12559 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, National Park Service, Zion National Park, Springdale, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Zion National Park, Springdale, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the National Park Service's professional staff in consultation with representatives of the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1927, human remains representing one individual were donated to Zion National Park. No information on the provenance of the human remains was provided. No known individual was identified. No associated funerary objects are present.

In 1933, human remains representing three individuals were recovered during legally authorized excavations within the boundary of Zion National Park. The excavation was under the direction of archeologist Ben Wetherill. No known individual was identified. No associated funerary objects are present.

In 1935, human remains representing one individual were donated to Zion National Park. No information on the provenance of the human remains was provided. No known individual was identified. No associated funerary objects are present.

In the 1960s, human remains representing one individual were donated to Zion National Park. No information on the provenance of the human remains was provided. No known individual was identified. No associated funerary objects are present.

In 1960, human remains representing one individual were donated to Zion National Park. No information on the provenance of the human remains was provided. No known individual was identified. No associated funerary objects are present.

In 1962, human remains representing two individuals were donated to Zion National Park. The human remains are believed to have been excavated on private land in Springdale, UT. No known individual was identified. No associated funerary objects are present.

In 1964, human remains representing one individual were discovered at a site within the boundary of Zion National Park. No known individual was identified. No associated funerary objects are present.

In the 1970s, human remains representing one individual were donated to Zion National Park. No information on the provenance of the human remains was provided. No known individual was identified. No associated funerary objects are present.

Based on the above mentioned information, the superintendent of Zion National Park determined in 1995 that, pursuant to 43 CFR 10.2 (d) (1), the human remains listed above represent the physical remains of 11 individuals of Native American ancestry. In 2001, the superintendent of Zion National Park also determined that a relationship of shared group identity could not reasonably be traced between these human remains and any present-day Indian tribe.

In May 2001, the superintendent of Zion National Park requested a recommendation regarding the disposition of these culturally unidentifiable human remains from the Native American Graves Protection and Repatriation Review Committee. The review committee is charged by statute with compiling an inventory of culturally unidentifiable human remains and recommending specific actions for developing a process for disposition of such remains [25 U.S.C. 3006 (d)(5)]. The superintendent of Zion National Park requested that the review committee recommend disposition of the culturally unidentifiable human

remains to seven Indian tribes that have demonstrated a cultural relationship with the Zion National Park area by means of a final judgement of the Indian Claims Commission and other sources.

The review committee considered the request at its May 31-June 2, 2001, meeting in Kelseyville, CA. On August 13, 2001, the Assistant Director, Cultural Resources Stewardship and Partnerships, writing on behalf of the Secretary of the Interior, informed the superintendent of Zion National Park that the review committee recommended disposition of the culturally unidentifiable human remains to the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martin C. Ott, Superintendent, Zion National Park, Springdale, UT 84767-1099, telephone (435) 772-0142, before July 19, 2002. Disposition of these human remains to the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar City, Indian Peak, Kanosh, Koosharem, Shivwits Bands); Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: April 16, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–12562 Filed 5–17–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–428 and 731–TA–992–994 and 996–1005 (Preliminary)]

Oil Country Tubular Goods From Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of oil country tubular goods, provided for in subheadings 7304.21.30, 7301.21.60, 7304.29.10, 7304.29.20, 7304.29.30, 7304.29.40, 7304.29.50, 7304.29.60, 7305.20.20, 7305.20.40, 7305.20.60, 7305.20.80, 7306.20.10, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, and 7306.20.80 of the Harmonized Tariff Schedule of the United States, from Austria that are alleged to be subsidized by the Government of Austria and from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are alleged to be sold at less than fair value (LTFV).[2]

Background

On March 29, 2002, petitions were filed with the Commission and the Department of Commerce (Commerce) on behalf of IPSCO Tubulars, Inc., Camanche, IA; Koppel Steel Corp., Ambridge, PA; Lone Star Steel Co., Dallas, TX; Maverick Tube Corp., Chesterfield, MO; Newport Steel Corp., Newport, KY; and United States Steel Corp., Pittsburgh, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of oil country tubular goods from Austria and by reason of LTFV imports of the same product from Austria, Brazil, China, Colombia, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela.[3] Accordingly, effective March 29, 2002, the Commission instituted the subject investigations. Petitioners withdrew their petition against Colombia on April 11, 2002, and Commerce did not initiate an investigation on this country. Accordingly, the Commission terminated its investigation concerning Colombia (Inv. No. 731–TA–995 (Preliminary)) on April 29, 2002 (**Federal Register** of May 8, 2002 (67 FR 30964)).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 5, 2002 (67 FR 16437). The conference was held in Washington, DC, on April 19, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 13, 2002. The views of the Commission are contained in USITC Publication 3511 (May 2002), entitled Oil Country Tubular Goods from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela: Investigations Nos. 701–TA–428 and 731–TA–992–994 and 996–1005 (Preliminary).

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–12542 Filed 5–17–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph Thomas Allevi, M.D.; Revocation of Registration

On July 24, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Joseph Thomas Allevi, M.D., notifying him of an opportunity to show

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting.

[3] Lone Star does not join the petition with respect to Romania.

cause as to why the DEA should not revoke his DEA Certificate of Registration, BA4784927, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Allevi was not authorized by the State of California to handle controlled substances. The order also notified Mr. Allevi that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Allevi at his DEA registered premises in Laguna Niguel, California. The OTSC was returned, marked ''Attempted, Not Known.'' To date, no communications have been received from Dr. Allevi nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the DEA made a legally sufficient attempt to serve the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Allevi is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Allevi currently possesses DEA Certificate of Registration BA4784927, issued to him in California. By Order of the Medical Board of California (Board), dated May 8, 2000, the State of California issued charges seeking the revocation of Dr. Allevi's Physician's and Surgeon's Certificate. The Board outlined five separate causes for discipline, including *inter alia* an allegation that between December 1999 and April 2000, Dr. Allevi issued false prescriptions for Schedule III and IV controlled substances in the names of his wife and daughters, but in fact was obtaining the prescriptions for his own personal use. Dr. Allevi subsequently admitted to an investigating law enforcement officer that he was addicted to controlled substances, and was diverting controlled substances for his own personal use. Each of the five causes for discipline set forth in the Order by the Board stemmed from various acts of misconduct by Dr. Allevi concerning the mishandling of controlled substances.

As a result of the Board's action, Dr. Allevi entered into a Stipulation for Surrender of License with the Board, effective August 29, 2000. Among the terms and conditions was an agreement that Dr. Allevi surrender his Physician's and Surgeon's Certificate. The investigative file contains no evidence that Dr. Allevi's Certificate has been reinstated. Therefore, the Deputy Administrator concludes that Dr. Allevi is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green,* M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Allevi is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Allevi is also not authorized to handle controlled substances in California, the state in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and).104, hereby orders that the DEA Certificate of Registration BA4784927, previously issued to Joseph Thomas Allevi, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12483 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Layfe Robert Anthony, M.D.; Revocation of Registration

On June 22, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Layfe Robert Anthony, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BA4090320, pursuant to 21 U.S.C. 834(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent is not currently authorized to practice medicine or to handle controlled substances in Utah, the state in which he is registered.

By letter received August 6, 2001, Respondent, through counsel, requested a hearing in this matter. On August 10, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition. By Order dated August 15, 2001, Administrative Law Judge Gail A. Randall (Judge Randall) granted Respondent time to respond to the Government's Motion. On August 23, 2001, the Respondent timely filed Respondent's Memorandum in Opposition to Government's Request for Stay and Summary Disposition. On August 29, 2001, Judge Randall issued an Order Granting a Stay in this proceeding. The Stay was lifted by her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated October 2, 2001 (Opinion and Recommended Ruling), granting the Government's Motion for Summary Disposition. The record of these proceedings was subsequently transmitted to the Deputy Administrator for his final decision November 20, 2001.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The Government requests summary disposition based upon its allegation that Respondent does not have state authority to handle controlled substances. The Government attached to its motion a copy of an Emergency Order, entered by J. Craig Jackson, R.Ph., Director of Occupational and Professional Licensing, Department of Commerce, State of Utah, dated April 3, 2001. In the Order, Director Jackson ordered the immediate suspension of the Respondent's licenses to perform surgery and to administer and prescribe controlled substances, ''pending further order of the Division.'' Director Jackson further stated that the Division will issue a restricted license to the Respondent pending a formal adjudicative proceeding in the matter.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the application or registrant is without state authority to

handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented undisputed evidence demonstrating that the Respondent is not authorized to practice medicine or to administer or prescribe controlled substances in the State of Utah.

Respondent contends the Emergency Order resulted from a closed hearing in which he was not permitted to appear, call witnesses, confront his accusers, or participate in any meaningful fashion. Respondent argues that because a formal hearing has yet to be concluded, the matter before the DEA should be stayed pending the outcome of the proceeding before the Utah State Division of Occupational and Professional Licensing. In support of this contention, Respondent cites to *Hezekiah K. Heath, M.D.,* 51 FR 26,612 (1986) (*Heath*) for the proposition that the DEA has recognized it cannot rely upon a state's suspension where the respondent in a DEA hearing did not have the opportunity to contest the state's action in a plenary hearing.

The Deputy Administrator concurs with Judge Randall's reading of *Heath,* which she found ''did not create an exception to the statutory mandate for cases in which a registrant's state license has been suspended by the appropriate state licensing authority without a hearing. Rather, the Administrator informed the Respondent that the DEA would accept as lawful and valid, a state regulatory board's order, unless and until such order had been overturned 'by a state court or otherwise pursuant to state law.''' *Heath* further found that he DEA proceedings were an inappropriate forum in which to challenge a state regulatory board's order. The Deputy Administrator hereby reaffirms *Heath's* conclusion that ''* * * 21 U.S.C. 824(a) clearly provides that a registrant's state license need only have been suspended to provide a lawful basis for revocation of a DEA registration.'' *Id* at 26,612.

The Deputy Administrator further concurs with Judge Randall's finding that respondent's allegation that he was authorized to handle controlled substances in the State of Nevada is not supported by the evidence, meritless, and ultimately irrelevant. Respondent's DEA Certificate of Registration is for a Utah address, and Respondent is not authorized to practice medicine or to handle controlled substances in Utah.

The Deputy Administrator also concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BA4090320, issued to Layfe Robert Anthony, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12495 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Byron L. Aucoin, M.D.; Revocation of Registration

On June 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Byron L. Aucoin, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BA5204817, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Aucoin was not authorized by the State of Louisiana to handle controlled substances. The order also notified Dr. Aucoin that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Aucoin at his DEA registered premises in Shreveport, Louisiana. A postal delivery receipt was signed July 12, 2001, on behalf of Dr. Aucoin, indicating the OTSC was received. To date, no response has been received from Dr. Aucoin nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Aucoin is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 130.143(d) and (e), and 1301.46.

The Deputy Administrator finds as follows: Dr. Aucoin currently possesses DEA Certificate of Registration BA5204817, issued to him in Louisiana. In a letter dated October 30, 2000, the Louisiana State Board of Medical Examiners (Board) notified the DEA New Orleans Field Division that Dr. Aucoin had entered into a Stipulation and Agreement for Voluntary Surrender of his medical license, effective September 27, 2000. Subsequent to his failure to attend a hearing set by the Board to address charges of misconduct, Dr. Aucoin informed the Board that he wished to permanently retire from the practice of medicine in Louisiana by voluntarily surrendering his medical license. The investigative file contains no evidence that Dr. Aucoin's medical license has been reinstated. Therefore, the Deputy Administrator concludes that Dr. Aucoin is not currently licensed or authorized to handle controlled substances in Louisiana.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.*, 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Aucoin is not authorized to practice medicine in Louisiana, and therefore, the Deputy Administrator infers that Dr. Aucoin is also not authorized to handle controlled substances in Louisiana, the state in which he holds his DES Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823

and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BA5204817, previously issued to Byron L. Aucoin, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12490 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Miguel Ramon Castillo-Inzunza, M.D.; Revocation of Registration

On August 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Miguel Ramon Castillo-Inzunza, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BC3931955, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Castillo-Inzunza was not authorized by the State of California to practice medicine. The order also notified Dr. Castillo-Inzunza that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

Copies of the OTSC were sent to Dr. Castillo-Inzunza at his DEA registered premises in Santa Ana, California, the United States Penitentiary at Lom Poc, California, and to his attorney in La Jolla, California. The OTSC sent to Dr. Castillo-Inzunza's registered premises was returned, marked ''Undeliverable as addressed—forwarding order expired.'' The OTSC sent to Dr. Castillo-Inzunza's incarceration address was received on September 7, 2001, as indicated by the signed postal return receipt. The OTSC sent to Dr. Castillo-Inzunza's attorney was received September 11, 2001, as indicated by the signed postal return receipt. To date, no response has been received from Dr. Castillo-Inzunza nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Castillo-Inzunza is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Castillo-Inzunza currently possesses DEA Certificate of Registration BC3931955, issued to him in California. By Decision dated January 4, 2001, and effective January 11, 2001, the Medical Board of California, Division of Medical Quality (Board) adopted a Stipulated Surrender of Licenses and Order whereby Dr. Castillo-Inzunza, with advice of counsel, surrendered his California State Physician's and Surgeon's Certificate and his Physician Assistants Supervisor Approval to the Board.

The Stipulated Surrender was based upon a series of charges outlined in an Accusation by the Board, dated April 12, 1999, that set forth five Causes for Discipline, to wit: (1) Aiding and Abetting the Unlicensed Practice of Medicine; (2) Gross Negligence and Repeated Negligent Acts; (3) Falsification and/or Alteration of Medical Records; (4) Violation of Drug Statutes and Dishonesty; and (5) Prescribing Without Good Faith Prior Examination and Medical Indication.

The investigative file further reveals Dr. Castillo-Inzunza pleaded guilty in San Diego County Superior Court on or about November 6, 2000, to two counts of Unlawful Practice of Medicine with Serious Injury and was sentenced to two years in Federal prison (to run concurrently with his Federal conviction, *infra*) and a $400 fine.

Dr. Castillo-Inzunza also pleaded guilty in the United States District Court for the Southern District of California on or about November 7, 2000, to Federal charges relating to the Unlawful Importation of Merchandise and Introduction into Interstate Commerce of Unapproved Drugs, and was sentenced to two years' incarceration, running concurrently with his California State conviction, followed by three years' probation and a $4,000 fine.

Therefore, the Deputy Administrator concludes that Dr. Castillo-Inzunza is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Castillo-Inzunza is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Castillo-Inzunza is also not authorized to handle controlled substances in California, the State in which he holds his DEA Certificate of Registration. Furthermore the Deputy Administrator finds pursuant to 21 U.S.C. 824(a)(2) that Dr. Castillo-Inzunza has been convicted of a felony relating to the controlled substances in that he caused his employees to illegally transport medications from Mexico into the United States, including codeine and other controlled drugs, in violation of 18 U.S.C. 371 and 545. Dr. Castillo-Inzunza then caused his employees to remove the Spanish labels from the medications and replace them with new labels showing different lot numbers and expiration dates. Dr. Castillo-Inzunza gave at least one of his patients these unlawful Mexican drugs.

In addition, the Deputy Administrator finds pursuant to 21 U.S.C. 824(a)(4) that Dr. Castillo-Inzunza has committed acts that render his registration inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(f). All five of the public interest factors are adversely implicated by the conduct of Dr. Castillo-Inzunza described above.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BC3931955, previously issued to Miguel Ramon Castillo-Inzunza, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12489 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Winthrop C. Davis, M.D.; Revocation of Registration

On June 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Winthrop C. Davis, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BD3685053, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Davis was not authorized by the State of Florida to practice medicine. The order also notified Dr. Davis that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Davis at his DEA registered premises in Fort Lauderdale, Florida. The OTSC was returned, marked ''Unclaimed.'' An Andalusia, Alabama forwarding address was written on the envelope. Through the assistance of Alabama State law enforcement authorities, copies of the OTSC were delivered to Dr. Davis and his legal counsel in Andalusia, Alabama, on or about September 7, 2001. To date, no response has been received from Dr. Davis nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Davis is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant o 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Davis currently possesses DEA Certificate of Registration BD3685053, issued to him in Florida. By Order of Emergency Suspension of License, dated November 15, 2000, the State of Florida, Department of Health, suspended Dr. Davis' medical license, finding that Dr. Davis posed a danger to the health, safety and welfare of the public, in that Dr. Davis was unable to practice medicine as a physician with reasonable skill and safety because of untreated major depression and chronic relapsing substance abuse. In addition, the Florida Department of Health found Dr. Davis unwilling to cooperate with the Physicians Recovery Network, and that he failed to follow the recommendations of the Network. The investigative file further reveals Dr. Davis apparently has abandoned his DEA registered premises in Fort Lauderdale, Florida for a last known address in Andalusia, Alabama, approximately 625 miles away in a state in which Dr. Davis does not possess a license to practice.

On January 10, 2001, Dr. Davis was arrested by the Covington County Police Department, Andalusia, Alabama, and charged with Possession of a Controlled Substance. At the time of his arrest, Dr. Davis was observed to be driving erratically, and he refused to stop until law enforcement personnel forced him using a rolling roadblock. Four tablets of Carisoprodol (Soma), a Schedule IV controlled substance under Alabama State law, were found on Dr. Davis' person, and a search of the vehicle revealed two prescription bottles, in the name of another individual, containing another 109 additional Soma tablets. Dr. Davis did not possess a prescription for Soma. In addition, two Soma prescriptions found in the vehicle were written by Dr. Davis at a time when his Florida State medical license was suspended.

The investigative file contains no evidence that the Emergency Suspension of Dr. Davis' medical license has been lifted.

Therefore, the Deputy Administrator concludes that Dr. Davis is not currently licensed or authorized to handle controlled substances in Florida. Nor does the investigative file contain any evidence that Dr.Davis is authorized to practice medicine or handle controlled substances in Alabama.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prereequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Davis is not authorized to practice medicine in Florida, and therefore, the Deputy Administrator infers that Dr. Davis is also not authorized to handle controlled substances in Florida, the State in which he holds his DEA Certificate of Registration.

In addition, the Deputy Administrator also finds pursuant to 21 U.S.C. 824(a)(4) that Dr. Davis has committed acts that render his registration inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(f). All five of the public interest factors are adversely implicated by the conduct of Dr. Davis described above.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BD 3685053, previously issued to Winthrop C. Davis, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12491 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Corrado Di Martino, M.D.; Revocation of Registration

On July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Corrado Di Martino, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AD6909951, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Di Martino was not authorized by the Commonwealth of Massachusetts to handle controlled substances. The order also notified Dr. Di Martino that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Di Martino at his DEA registered premises in Southbridge, Massachusetts. A postal delivery receipt was signed July 26, 2001, by Dr. Di Martino, indicating the OTSC was received. To date, no response has been received from Dr. Di Martino nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Di Martino is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Di Martino currently possesses DEA Certifying of Registration AD6909951, issued to him in Massachusetts. By Order of the Commonwealth of Massachusetts Board of Registration in Medicine (Board), dated October 11, 2000, Dr. Di Martino's medical license was summarily suspended, upon the finding that ''based upon the information set forth in the Motion for Summary Suspension* * * the health, safety, and welfare of the public necessitates said suspension.'' The investigative file contains no evidence that the Summary Suspension of Dr. Di Martino's medical license has been lifted.

Therefore, the Deputy Administrator concludes that Dr. Di Martino is not currently licensed or authorized to handle controlled substances in Massachusetts.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green,* M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Di Martino is not authorized to practice medicine in Massachusetts, and therefore, the Deputy Administrator infers that Dr. Di Martino is also not authorized to handle controlled substances in Massachusetts, the state in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AD6909951, previously issued to Corrado Di Martino, M.D. be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12488 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James E. Eaves, M.D.; Revocation of Registration

On January 4, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to James E. Eaves, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AE4563967, pursuant to 21 U.S.C. 824(a)(1) and (a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Eaves was not authorized by the State of Iowa to practice medicine, and his continued registration was inconsistent with the public interest. The Order also notified Dr. Eaves that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Eaves at his DEA registered premises in Clarinda, Iowa. A postal delivery receipt was signed January 15, 2002, by Dr. Eaves, indicating the OTSC was received. To date, no response has been received from Dr. Eaves nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Eaves is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Eaves currently possesses DEA Certificate of Registration AE4563967, issued to him in Iowa. Pursuant to a Settlement Agreement in May 1999, Dr. Eaves was prohibited by the Iowa Board of Medical Examiners (Board) from the practice of medicine in Iowa, without the specific permission of the Board. The DEA investigative file reveals Dr. Eaves does not currently maintain an active medical license in Iowa, and is therefore foreclosed from the practice of medicine in the state in which he holds his DEA registration.

In January 2001, however, Dr. Eaves stated to DEA investigators that he intended to retain his DEA Certificate of Registration solely for the purposes of self-prescribing controlled substances. This practice is not permitted by Iowa State law.

The investigative file further reveals that in October 1988, the Board placed Dr. Eaves' medical license on three years' probation, based in part on findings that Dr. Eaves authorized excessive amounts of controlled substances to be dispensed when such drug therapy was not warranted. In May 1991, the Board again placed Dr. Eaves' medical license on probation, this time for five years, and further restricted his controlled substance privileges, based in part on findings that Dr. Eaves continued to authorize excessive amounts of controlled substances to be dispensed when such drug therapy was not warranted. In December 1994, the Board extended this probation period for an additional 32 months, based on findings that Dr. Eaves had violated his previous probation.

In addition, in June 1998, the Board issued a new Compliant and Statement of Charges Against James Edgar Eaves, M.D., Respondent, based in part on findings that Dr. Eaves authorized the dispensing of excessive amounts of controlled substances when such drug therapy was not warranted. This is the action that led to the previously mentioned May 1999 Settlement Agreement.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration if he determines that granting the registration would be *inter alia* inconsistent with the public interest, as determined by section 823. In determining the public interest, 823(f) requires that the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Deputy Administrator finds factors two, four, and five relevant to the instant case.

Regarding factor two, the applicant's experience in dispensing controlled substances, the investigative file reveals that, on at least three separate occasions, the Iowa Board of Medical examiners took action against Dr. Eaves' medical license for *inter alia* his authorization of excessive amounts of controlled substances to be dispensed for lack of a legitimate medical reason. The Board's actions culminated in an outright prohibition of Dr. Eaves' practicing medicine in Iowa without the express permission of the Board. The Deputy Administrator finds Dr. Eaves' documented, actionable willingness to authorize the dispensing of excessive amounts of controlled substances creates a grave risk of diversion, and furthermore is in violation of 21 CFR 1306.04, in that in prescribing excessive amounts of controlled substances, as documented by the Board, Dr. Eaves was not issuing prescriptions for a legitimate medical purpose, nor was he acting in the usual course of professional practice.

Regarding factor four, compliance with applicable State, Federal, and local laws relating to controlled substances, the DEA investigation revealed that the Iowa Board of Medical Examiners has, on at least three separate occasions, taken action against Dr. Eaves' medical license, based upon his failure to properly handle controlled substances, as set forth above. Dr. Eaves is currently prohibited from practicing medicine in the state in which he holds his DEA registration without the Board's specific permission.

Regarding factor five, such other conduct which may threaten the public health and safety, two separate letters were sent to Dr. Eaves by DEA, requesting that he voluntarily surrender his DEA Certificate of Registration due to the above-described circumstances. Dr. Eaves refused, stating that he wished to maintain his DEA registration in order to self-prescribe. Dr. Eaves failed to respond to a subsequent letter from DEA informing him that self-prescribing is a violation of section 653 of the Iowa Administrative Code, Chapter 12, Sub Rule 12.4(19)(a), pursuant to which a physician licenses in Iowa is prohibited from self-prescribing or self-dispensing controlled substances. The Deputy Administrator finds Dr. Eaves' lack of familiarity with applicable state law concerning controlled substances, his apparent willingness to ignore that law even when brought to his attention, together with his demonstrated past record of lack of competence in handling controlled substances, creates an unacceptable risk to the public health and safety.

The investigative file contains a letter dated March 17, 2000, to DEA from counsel for Dr. Eaves. The letter contests several of the allegations set forth in the Board's Statement of Charges Against James Edgar Eaves, M.D., Respondent, dated June 4, 1998. As a matter of discretion, the Deputy Administrator has considered the contentions raised in the letter, and rejects them. The Deputy Administrator notes that Dr. Eaves had the opportunity to contest the charges against him before the Board, but chose instead to enter into the May 1999 Settlement Agreement. That Agreement provided that Dr. Eaves consent to be cited for the violations set forth in the Board's Statement of Charges, and further provided that Dr. Eaves waived all rights to a contested hearing concerning the allegations in the Statement of Charges and further waiver any objections to the Settlement Agreement. The Deputy Administrator thus finds Dr. Eaves has conceded the allegations contained in the Board's Statement of Charges, and he will not be permitted to raise objections for the first time here through his counsel's anomalous submission.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration, number AE4563967, previously issued to James E. Eaves, M.D., be, and it hereby is, revoked; and furthermore, any applications for renewal and/or modification of said Certificate be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12494 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David H. Mills, D.V.M.; Revocation of Registration

On July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to David H. Mills, D.V.M., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BM4863812, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f), for the reasons that Respondent's state medical license has been suspended, and Respondent is not currently authorized to practice veterinary medicine or to handle controlled substances in Wisconsin, the state in which he is registered.

By letter dated August 10, 2001, Respondent requested a hearing in this matter. On September 14, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition (Government's Motion). By Order dated September 20, 2001, Administration Law Judge Gail A. Randall (Judge Randall) granted Respondent until October 4, 2001 to respond to the Government's Motion. Subsequently, by Order dated November 28, 2001, Respondent was granted until December 5, 2001, to respond to the Government's Motion. The Order was sent certified mail, return receipt requested. Yet while Judge Randall's office received a signed and dated receipt indicating this Order was received December 3, 2001, Respondent failed to file a response to the Government's Motion.

The Government attached to its Motion a copy of the Final Decision and Order of the State of Wisconsin (Order), Veterinary Examining Board (Board), dated February 1, 2001, revoking Respondent's license to practice veterinary medicine. The Government also attached to its Motion a declaration of the custodian of records for the Board, verifying that, as of February 1, 2001, Respondent's veterinary license had been revoked.

On January 8, 2002, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Recommended Ruling), wherein she granted the Government's Motion and recommended that Respondent's DEA registration be revoked. The record

of these proceedings was subsequently transmitted to the Deputy Administrator for final decision February 12, 2002.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Recommended Ruling of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green,* M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented undisputed evidence demonstrating that the Respondent is not authorized to practice veterinary medicine in the State of Wisconsin, the location of his business as stated on his DEA Certificate of Registration. The Deputy Administrator concurs with Judge Randall's finding that, as Respondent is not authorized to practice veterinary medicine in Wisconsin, it is reasonable to infer that Respondent likewise is not authorized to handle controlled substances in Wisconsin. *James D. Okun,* 62 FR 16,871 (1997). Without state authority to handle controlled substances, the Respondent is not eligible to possess a DEA registration for a place of business in Wisconsin.

The Deputy Administrator also concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM4863812, issued to David H. Mills, D.V.M., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be, and hereby are, denied.

This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12487 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Willard W. Leiske, M.D., Revocation of Registration

On December 21, 2001, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Willard W. Leiske, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AL6303046, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Leiske was not authorized by the State of California to handle controlled substances. The order also notified Dr. Leiske that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Leiske at his DEA registered premises in Big Bear Lake, California. The OTSC was returned, marked ''Returned To Sender.'' To date, no communications have been received from Dr. Leiske nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since a legally sufficient attempt to serve the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Leiske is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Leiske currently possesses DEA Certificate of Registration AL6303046, issued to him in California. By Decision and Order dated May 19, 2000, the Medical Board of California, Division of Medical Quality (Board) adopted as its Decision a Stipulation for Surrender of License signed by Dr. Leiske April 25, 2000, whereby he surrendered his medical license and acknowledged that he would no longer be permitted to practice as a physician and a surgeon in California. The investigative file contains no evidence that Dr. Leiske's medical license has been reinstated.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Leiske is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Leiske is also not authorized to handle controlled substances in California, the State in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AL6303046, previously issued to Willard W. Leiske, M.D., be, and it hereby is revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12484 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Frank W. Nedock, D.D.S.; Revocation of Registration

On or about April 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Frank W. Nedock, D.D.S., at his DEA registered premises in Bloomfield Township, Michigan, notifying him of an opportunity to show cause as to why the

DEA should not revoke his DEA Certificate of Registration, AN7738048, and deny any pending applications for renewal of said registration, for reason that such registration is inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(f). The OTSC also notified Dr. Nedock that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was personally served upon Dr. Nedock by a DEA Diversion Investigator May 4, 2001. To date, no response has been received from Dr. Nedock nor anyone purporting to represent him.

Therefore, the Deputy Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Nedock is deemed to have waived his rights to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds as follows. On June 27, 2000, the State of Michigan Bureau of Health Service, Board of Dentistry (Board), issued a Final Order prohibiting Dr. Nedock from prescribing any controlled substances in Schedules I through IV. On December 26, 2000, the Board's Disciplinary Subcommittee issued an Administrative Complaint to Dr. Nedock alleging that he wrote 125 Schedule III controlled substance prescriptions during the period between July 27, 2000, and October 10, 2000, in violation of the Board's Final Order. On January 2, 2001, the Board issued an Order of Summary Suspension suspending Dr. Nedock's license to practice dentistry.

In response, Dr. Nedock issued a letter dated January 6, 2001, to the Michigan Department of the Attorney General, alleging that an employee of that office was ''* * * in violation of my Recorded Copyright * * * [that] mandates issue(s) and user(s) in violation of the Recorded Copyright be charged one million dollars of silver species [sic] in lawful coinage of the United States per use per fiction.''

On February 13, 2001, the DEA Detroit office was notified that controlled substance prescriptions written by Dr. Nedock were being presented to local pharmacies. On February 23, 2001, a DEA investigator met with Dr. Nedock and informed him that he was not permitted to prescribe controlled substances.

On February 15, 2001, the Board held a hearing regarding Dr. Nedock's suspension. Although he was present, Dr. Nedock refused to admit his identity, and instead identified himself as the ''trustee fiduciary creditor of the secured party.'' On March 5, 2001, a patient presented a prescription issued by Dr. Nedock for a controlled substance at a local pharmacy. That same day, DEA investigators learned that the same patient also received a controlled substance prescription from Dr. Nedock February 26, 2001. Substantial evidence in the investigative file shows Dr. Nedock continues to practice dentistry even though his license has been suspended.

The investigative file contains no evidence that Dr. Nedock's license has been reinstated. Therefore, the Deputy Administrator concludes that Dr. Nedock is not currently authorized to practice dentistry in Michigan, the State in which he maintains his DEA Certificate of Registration.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,014 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Nedock is not authorized to practice dentistry in Michigan, and therefore, the Deputy Administrator infers that Dr. Nedock is also not authorized to handle controlled substances in Michigan, the state in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AN7738048, previously issued to Frank W. Nedock, D.D.S., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12486 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Allison E. Purtell, M.D., Revocation of Registration

On June 14, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Allison E. Purtell, M.D., notifying her of an opportunity to show cause as to why the DEA should not revoke her DEA Certificate of Registration, AP1775064, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Purtell was not authorized by the State of California to handle controlled substances. The order also notified Dr. Purtell that should no request for hearing be filed within 30 days, her right to a hearing would be deemed waived.

The OTSC was sent to Dr. Purtell at her DEA registered premises in Laguna Niguel, California. A postal delivery receipt was signed July 6, 2001, by Dr. Purtell, indicating the OTSC was received. To date, no response has been received from Dr. Purtell nor anyone purporting to represent her.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Purtell is deemed to have waived her right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and 1301.46.

The Deputy Administrator finds as follows. Dr. Purtell currently possesses DEA Certificate of Registration AP1775064, issued to her in California. By Decision of the Division of Medical Quality, California Medical Board (Board), dated March 3, 2000 and effective April 3, 2000, the Board adopted an opinion of an Administrative Law Judge revoking Dr. Purtell's Physician and Surgeon's Certificate, finding *inter alia,* negligence, incompetence, and that ''Dr. Purtell engaged in unprofessional conduct based on repeated acts of

clearly excessive prescribing drugs as determined by the standard of the community of physician and surgeons.'' The investigative file contains no evidence that Dr. Purtell's medical license has been reinstated.

Therefore, the Deputy Administrator concludes that Dr. Purtell is not currently licensed or authorized to handle controlled substances in California.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Purtell is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Purtell is also not authorized to handle controlled substances in California, the state in which she holds her DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AP1775064, previously issued to Allison E. Purtell, M.D., be, and it hereby is, revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12482 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Randall M. Schaffer, D.D.S.; Revocation of Registration

On August 6, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Randall M. Schaffer, D.D.S., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registrations, AS1641554 and BS3509289, and deny any applications for modification or renewal, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that Respondent's registration would be inconsistent with the public interest. Following prehearing procedures, a hearing was held on March 28 and 29, 2000, in New Orleans, Louisiana.

On October 4, 2000, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of Administrative Law Judge, recommending that Respondent's registration be continued with restrictions. By letter dated November 21, 2000, Judge Bittner transmitted the complete record to the Deputy Administrator for final decision in this matter.

On January 11, 2001, the Government filed a request for remand with the Deputy Administrator. On January 26, 2001, the Administrator of the DEA remanded the record to Judge Bittner for further proceedings, because ''(b)y correspondence dated January 11, 2001, I was informed by counsel for the Government that new and previously unavailable evidence had recently been acquired by the Government, and that such evidence may affect the outcome of these proceedings.''

On February 16, 2001, counsel for the Government filed the Government's Motion to Reopen Record and Admission of Supplemental Evidence. On February 27, 2001, Respondent filed the Respondent's Response to the Government Motion.

By her Ruling on Motion and Order Rescinding Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge dated March 27, 2001, Judge Bittner granted the Government's Motion and rescinded the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge issued October 4, 2000. In her Supplemental Opinion and Recommended Decision of the Administrative Law Judge dated March 27, 2001, Judge Bittner recommended that Respondent's DEA Certificate of Registrations be revoked and any pending applications for renewal be denied on the basis that Respondent lacks state authority to handle controlled substances.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The additional evidence submitted by the Government consists of a Revised Decision of the Louisiana State Board of Dentistry (Board) dated September 20, 2000, ordering the revocation of the Respondent's license to practice dentistry in the State of Louisiana, and a letter from the Louisiana Department of Health and Hospitals to Respondent dated December 4, 2000, revoking Respondent's Louisiana Controlled Substance License.

The DEA does not have the statutory authority pursuant to the Controlled Substance Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to practice dentistry in Louisiana, and furthermore, that Respondent's state authority to handle controlled substances has been revoked. Respondent does not deny that he is not currently authorized to handle controlled substances in the State of Louisiana. The Deputy Administrator finds that Judge Bittner allowed Respondent ample time to refute the Government's evidence, and that Respondent has submitted no evidence or assertions to the contrary. Respondent cites no authority for his assertion that revocation of his DEA Certificate of Registrations would be premature and a violation of due process.

According, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registrations, AS1641554 and BS3509289, previously issued to Randall M. Schaffer, D.D.S., be, and it hereby is, revoked, and any pending applications for renewal or modification and said Certificate be, and hereby are,

denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–12492 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gary Phillip Venuto, M.D., Revocation of Registration

On July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Gary Phillip Venuto, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AV2928022, and deny any pending applications for renewal, pursuant to 21 U.S.C. 823(f) and 824(a)(4). On August 6, 2001, Respondent filed a request for a hearing in this matter.

On August 29, 2001, the Government filed a Motion for Summary Disposition, asserting that Respondent is not currently authorized to handle controlled substances in Utah, the state in which he practices. Specifically, the Government contends that, on April 23, 2001, Respondent entered into a Stipulation and Order with the Utah Division of Occupational and Professional Licensing, Department of Commerce (Division), pursuant to which the Division revoked Respondent's controlled substance license. The Government argues that DEA cannot register or maintain a registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he or she practices.

Respondent argues that pursuant to the Division's Order, which placed his medical license on probation for five years, ''although (Respondent) is forbidden from direct contact with controlled substances, (he) is still a licensed practitioner who has authority to make decisions about his patients' controlled and addictive substance intake.'' Respondent argues there is no case law on the issue regarding whether a physician who has authority to make decisions about treating patients with controlled substances may retain his DEA registration.

On October 3, 2001, Administrative law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and Recommended Decision granting the Government's Motion for Summary Disposition. The matter was thereafter transmitted to the Deputy Administrator for final decision on November 19, 2001.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 USC 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green,* M.D., 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that the Respondent is not authorized to handle controlled substances in Utah, the State in which he practices, according to the address listed on his DEA Certificate of Registration. The Deputy Administrator concurs with Judge Bittner's finding that the Division's Stipulation and Order prohibited Respondent from exercising independent judgment in determining whether patients should be treated with controlled substances, and further that Respondent was prohibited from handling controlled substances. The Stipulation and Order specifically states that Respondent ''shall not be involved in any way regarding the patient's treatment regarding controlled substances or addictive medication.'' Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to handle controlled substances in the State of Utah.

The Deputy Administrator concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is not need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AV2928022, previously issued to Gary Philip Venuto, M.D., be, and it hereby is, revoked; and any pending applications for renewal or modification of said Certificate be, and hereby are, denied. This is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12485 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jonathan Weinstein, M.D.; Revocation of Registration

On June 29, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause (OTSC) by certified mail to Jonathan Weinstein, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BW5121948, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of this registration, pursuant to 21 U.S.C. 823(f), for the reason that Respondent is no longer authorized to handle controlled substances in the State in which he practices. By letter dated August 7, 2001, Respondent through counsel requested a hearing in this matter.

On August 21, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition (Government's Motion), arguing that Respondent is no longer authorized to handle controlled substances in the Commonwealth of Virginia, where Respondent's DEA Certificate of Registration states he conducts his business. The Government attached to its Motion a copy of an Order of the Department of Health Professions, State of Virginia, dated February 16, 2000, suspending Respondent's license to practice medicine and surgery. The basis for the suspension of Respondent's medical license was his February 4, 2000 felony conviction, in the United States District Court for the eastern District of Virginia, of possession of

child pornography, a copy of which judgment was also attached to the Government's Motion.

By letter dated September 1, 2001, Respondent requested a continuation in these proceedings, as he apparently was no longer being represented by counsel and needed to determine how to proceed. Respondent was granted until September 27, 2001, to respond to the Government's Motion.

On September 27, 2001, Respondent filed a response to the Government's Motion, asserting that since his medical license had been suspended, rather than revoked, revocation of his DEA registration would be extreme and excessive. Respondent also contends that there are no guidelines requiring revocation of a DEA registration following a registrant's felony conviction.

By Opinion and Recommended Decision of the Administrative Law Judge dated October 3, 2001, Mary Ellen Bittner (Judge Bittner) granted the Government's Motion, recommending that Respondent's DEA registration be revoked, and any pending applications for modification or renewal be denied. On November 19, 2001, the record of these proceedings was transmitted to the Deputy Administrator for final decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.,* 65 FR 50,570 (2000); *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented undisputed evidence demonstrating that the Respondent is not authorized to practice medicine or surgery in Virginia, and therefore, the Deputy Administrator infers that Respondent is also not authorized to handle controlled substances in Virginia, where he practices, according to the address listed on his DEA Certificate of Registration. The Deputy Administrator concurs with Judge Bittner's findings that Respondent does not deny that he is not currently licensed to practice medicine in the Commonwealth of Virginia, the jurisdiction in which he is registered by DEA. Thus, there is no genuine issue of material fact concerning Respondent's lack of authorization to practice medicine in Virginia or to handle controlled substances in that State.

The Deputy Administrator further concurs with Judge Bittner's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk v. Mullen,* 749 F. 2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BW5121948, issued to Jonathan I. Weinstein, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–12496 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; memorandum of understanding to participate in an employment eligibility confirmation pilot program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 19, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the muse of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Revision of a currently approved collection.*

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–18). SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Employers electing to participate in a pilot will execute a Memorandum of Understanding with the Immigration and Naturalization Service and the Social Security Administration (if applicable), that provides the specific terms and conditions governing the pilot and company information for each site that will be performing employment verification queries.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour and 35 minutes (1.538 hours) per response.

(6) *an estimate of the total public burden (in hours) associated with the collection:* 7,915 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: May 14, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–12497 Filed 5–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review; Request for Fee Waiver; Form I–912.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 19, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: New Information Collection.*

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–912, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The data collected on this form is used by the INS to determine eligibility for a fee waiver associated with the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1 hour and 15 minutes (1.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: May 14, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–12498 Filed 5–7–02; 8:45 am]

BILLING CODE 4410–10–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 23, 2002 via conference call. The meeting will begin at 2 p.m. and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' Semiannual Report to Congress for the period of October 1, 2001 through March 31, 2002.
3. Consider and act on other business.
4. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: May 16, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–12731 Filed 5–16–02; 3:52 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used when former Federal civilian employees and

other authorized individuals request information from or copies of documents in Official Personnel Folders or Employee Medical Folders from the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) . The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 19, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Returned Request Form, Reply to Request Involving Relief Agencies, Walk-In Request for OPM Records or Information.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 4,500.

Estimated time per response: 5 Minutes.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 375 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

Dated: May 14, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–12551 Filed 5–17–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Folk & Traditional Arts Section (Creativity and Organizational Capacity categories), will be held from 10 a.m.–4 p.m. on Friday, June 7, 2002 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 14, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–12555 Filed 5–17–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Creativity and Organizational Capacity categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506 as follows:

Media Arts: June 18–21, 2002, Room 716. A portion of this meeting, from 1 p.m. to 2 p.m. on June 21st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 18th–20th and from 9 a.m. to 1 p.m. and 2 p.m. to 4 p.m. on June 21st, will be closed.

Opera: June 25–26, 2002, Room 714. A portion of this meeting, from 4 p.m. to 5 p.m. on June 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 5:50 p.m. on June 25th and from 9 a.m. to 4 p.m. and 5 p.m. to 5:30 p.m. on June 26th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and

(9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 14, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–12556 Filed 5–17–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Patricia G. Norry, Deputy Executive Director for Management Services, Office of the Executive Director for Operations

R. William Borchardt, Associate Director for Inspection and Programs, Office of Nuclear Reactor Regulation

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel

Jesse L. Funches, Chief Financial Officer

Jon R. Johnson, Deputy Director, Office of Nuclear Reactor Regulation

Paul H. Lohaus, Director, Office of State and Tribal Programs

Ellis W. Merschoff, Regional Administrator, Region IV

Scott F. Newberry, Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research

James B. Schaeffer, Director, Applications Development Division, Office of the Chief Information Officer

Michael L. Springer, Director, Office of Administration

Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel

William F. Kane, Deputy Executive Director for Reactor Programs, Office of the Executive Director for Operations

Carl J. Paperiello, Deputy Executive Director for Materials, Research, and State Programs, Office of the Executive Director for Operations

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2026.

Dated at Rockville, Maryland, this 14th day of May 2002.

For the U.S. Nuclear Regulatory Commission,

Johanna P. Gallagher,

Secretary Executive Resources Board.

[FR Doc. 02–12554 Filed 5–17–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INTESTMENT CORPORATION

May 16, 2002 Public Hearing

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 67, Number 84, Page 21779) on May 1, 2002. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's May 22, 2002 Board of Directors meeting scheduled for 2 p.m. on May 16, 2002 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: May 16, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–12727 Filed 5–16–02; 3:09 pm]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between April 1, 2002, and April 30, 2002, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during April 2002:

Council on Environmental Quality

Associate Director for Energy and Transportation to the Chairman, Council on Environmental Quality. Effective April 15, 2002.

Department of Agriculture

Special Assistant to the Under Secretary for Food Safety. Effective April 9, 2002.

Special Assistant to the Director of Human Resources Management. Effective April 12, 2002.

Department of the Army (DOD)

Confidential Assistant to the General Counsel of the Army. Effective April 3, 2002.

Special Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective April 4, 2002.

Special Assistant to the General Counsel of the Army. Effective April 15, 2002.

Special Assistant to the General Counsel of the Army. Effective April 23, 2002.

Department of Commerce

Confidential Assistant to the Executive Assistant to the Secretary. Effective April 1, 2002.

Special Assistant for National Marine Fisheries Service to the Director, Office of Legislative Affairs. Effective April 3, 2002.

Special Assistant to the Chief of Staff. Effective April 3, 2002.

Public Affairs Specialist to the National Director, Minority Business Development Agency. Effective April 5, 2002.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 12, 2002.

Senior Advisor to the Assistant Secretary for Communications and Information. Effective April 17, 2002.

Press Secretary to the Director of Communications. Effective April 24, 2002.

Special Assistant to the Deputy Assistant Secretary for Service Industries, Tourism and Finance. Effective April 30, 2002.

Department of Defense

Civilian Executive Assistant to the Special Assistant to the Secretary of Defense (White House Liaison). Effective April 9, 2002.

Special Assistant to the Inspector General, Department of Defense. Effective April 12, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective April 17, 2002.

Staff Assistant to the Assistant Secretary of Defense (International Security Policy). Effective April 23, 2002.

Staff Assistant to the Assistant Secretary of Defense (International Security Policy). Effective April 23, 2002.

Staff Assistant to the Assistant Secretary of Defense (International Security Policy). Effective April 23, 2002.

Special Advisor to the Under Secretary of Defense (Policy). Effective April 24, 2002.

Staff Specialist to the Director, Small and Disadvantaged Business Utilization. Effective April 25, 2002.

Confidential Assistant to the Secretary of Defense. Effective April 26, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense for East Asia and Pacific. Effective April 29, 2002.

Department of Education

Special Assistant to the Chief of Staff. Effective April 3, 2002.

Confidential Assistant to the Special Assistant (Executive Assistant). Effective April 4, 2002.

Special Assistant to the Assistant Secretary for Civil Rights. Effective April 4, 2002.

Deputy Chief of Staff for Strategy/ Policy to the Chief of Staff. Effective April 5, 2002.

Special Assistant to the Director, Office English Language Acquisition. Effective April 9, 2002.

Special Assistant to the Deputy Secretary. Effective April 11, 2002.

Special Assistant to the Chief of Staff. Effective April 11, 2002.

Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective April 17, 2002.

Deputy Regional Representative, Region IV to the Secretary's Regional Representative. Effective April 17, 2002.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective April 17, 2002.

Special Assistant to the Deputy Assistant Secretary for Regional Services, Office of Intergovernmental and Interagency Affairs, Atlanta , Georgia. Effective April 17, 2002.

Special Assistant to the Director, Office of Public Affairs. Effective April 23, 2002.

Confidential Assistant to the Chief of Staff. Effective April 25, 2002.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective April 26, 2002.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 26, 2002.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective April 26, 2002.

Deputy Regional Representative, Dallas Texas, to the Secretary's Regional Representative. Effective April 29, 2002.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective April 29, 2002.

Department of Energy

Trip Coordinator to the Director, Office of Scheduling and Advance. Effective April 3, 2002.

Congressional Affairs Officer to the Assistant Secretary for Fossil Energy. Effective April 3, 2002.

Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 9, 2002.

Deputy Director of Advance for Strategic Initiatives to the Director, Office of Scheduling and Advance. Effective April 9, 2002.

Senior Policy Advisor to the Assistant Secretary for Fossil Energy. Effective April 12, 2002.

Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 12, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 16, 2002.

Senior Policy Advisor to the Assistant Secretary for Policy and International Affairs. Effective April 19, 2002.

Director of Intergovernmental Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective April 19, 2002.

Deputy Assistant Secretary for Environmental Science to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 25, 2002.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Public Affairs. Effective April 4, 2002.

Associate Commissioner to the Commissioner, Administration for Children, Youth and Families. Effective April 8, 2002.

Special Assistant to the Commissioner, Administration for Children, Youth and Families. Effective April 16, 2002.

Special Assistant to the Deputy Director, Office of Child Support Enforcement. Effective April 26, 2002.

Department of Housing and Urban Development

Special Assistant to the Regional Director, Chicago, Illinois. Effective April 5, 2002.

Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 15, 2002.

Special Assistant to the Assistant Secretary for Administration. Effective April 17, 2002.

Regional Director, Kansas City, Kansas to the Assistant Deputy Secretary for Field Policy and Management. Effective April 17, 2002.

Regional Director, Denver Colorado to the Assistant Deputy Secretary for Field Policy and Management. Effective April 18, 2002.

Staff Assistant to the Director of Executive Scheduling. Effective April 19, 2002.

Staff Assistant to the Regional Director, Atlanta, Georgia. Effective April 19, 2002.

Special Assistant to the Regional Director, Philadelphia, Pennsylvania. Effective April 26, 2002.

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective April 30, 2002.

Department of the Interior

Public Affairs Specialist to the Director, External and Internal Governmental Affairs. Effective April 8, 2002.

Chief, Congressional and Legislative Affairs to the Director of External and Intergovernmental Affairs. Effective April 12, 2002.

Special Assistant to the Assistant Secretary Indian Affairs. Effective April 15, 2002.

Special Assistant to the Director, External and Intergovernmental Affairs. Effective April 30, 2002.

Department of Justice

Public Affairs Specialist to the Director, Office of Public Affairs. Effective April 3, 2002.

Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective April 19, 2002.

Senior Counsel to the Director and Project Safe Neighborhoods Coordinator. Effective April 19, 2002.

Director, Office of Police Corps and Law Enforcement Education to the Assistant Attorney General, Office of Justice Programs. Effective April 29, 2002.

Department of Labor

Special Assistant to the Assistant Secretary for Employment and Training Administration. Effective April 9, 2002.

Staff Assistant to the Director of Public Liaison. Effective April 17, 2002.

Department of State

Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective April 5, 2002.

Staff Assistant to the Under Secretary for Global Affairs. Effective April 9, 2002.

Special Assistant to the Deputy Assistant Secretary, Chief Operating Officer of Overseas Buildings Operations. Effective April 9, 2002.

Director, Art in Embassies Program to the Deputy Assistant Secretary, Chief Operating Officer of Overseas Buildings Operations. Effective April 9, 2002.

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective April 19, 2002.

Public Affairs Specialist to the Deputy Assistant Secretary (Principal) in Public Affairs. Effective April 22, 2002.

Department of Transportation

Director of Public Affairs to the Administrator, Research and Special Programs Administration. Effective April 11, 2002.

Deputy Assistant Secretary to the Assistant Secretary for Governmental Affairs. Effective April 15, 2002.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective April 23, 2002.

Executive Assistant to the Associate Deputy Secretary of Transportation. Effective April 29, 2002.

Department of the Treasury

Deputy Director for Scheduling and Advance to the Director of Scheduling. Effective April 17, 2002.

Deputy Assistant Secretary to the Assistant Secretary for Financial Institutions. Effective April 17, 2002.

Deputy Assistant Secretary to the Assistant Secretary, Legislative Affairs. Effective April 29, 2002.

Environmental Protection Agency

Deputy Associate Administrator to the Associate Administrator, Office of Congressional Affairs. Effective April 5, 2002.

Federal Emergency Management Agency

Legislative Branch Chief to the Director of Congressional and Intergovernmental Affairs Division. Effective April 11, 2002.

Advisor for Media Affairs to the Director, Public Affairs. Effective April 22, 2002.

Assistant Division Director to the Director, Public Affairs Division. Effective April 25, 2002.

General Services Administration

Special Assistant to the Chief of Staff, Public Buildings Service. Effective April 17, 2002.

National Transportation Safety Board

Director, Office of Communications to the Chairman. Effective April 2, 2002.

Director, Office of Family Members to the Chairman. Effective April 18, 2002.

Office of Management and Budget

Confidential Assistant to the Associate Director for Information Technology and E-Government. Effective April 5, 2002.

Confidential Assistant to the Associate Director for Legislative Affairs. Effective April 25, 2002.

Office of National Drug Control Policy

Special Assistant to the Director, Office of National Drug Control Policy. Effective April 3, 2002.

Information Receptionist to the Director, Office of the National Drug Control Policy. Effective April 3, 2002.

Office of Personnel Management

Special Counselor to the General Counsel. Effective April 9, 2002.

Office of Science and Technology Policy

Assistant to the Director for Communications. Effective April 15, 2002.

Social Security Administration

Special Assistant to the Commissioner of Social Security. Effective April 9, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–12579 Filed 5–17–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–17; SEC File No. 270–412; OMB Control No. 3235–0469.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–17 *Transfer Agents' Obligation to Search for Lost Securityholders.*

Rule 17Ad–17 requires approximately 952 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is 4,760 hours annually for all transfer agents. The cost of

compliance for each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is $3.3 million.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 10, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12567 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25574; 812–12578]

J.P. Morgan Fleming Asset Management (USA), Inc., et al.; Notice of Application

May 15, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a).

APPLICANTS: J.P. Morgan Fleming Asset Management (USA), Inc. (''JPMFAM''), J.P. Morgan Fleming Asset Management (London), Ltd. (''JPMFAML''), any other existing or future registered investment adviser which acts as investment adviser or subadviser to a Portfolio (defined below) and which controls, is controlled by, or is under common control (as defined in section 2(a)(9) of the Act) with J.P. Morgan Chase & Co. (''JPM'') (''Future Advisers''),[1] J.P. Morgan Securities, Inc. (''JPMSI''), Mutual Fund Group (''MFG''), Mutual Fund Trust (''MFT''), Mutual Fund Select Group (''MFSG''), Mutual Fund Select Trust (''MFST''), Mutual Fund Variable Annuity Trust (''MFVAT''), Mutual Fund Investment Trust (''MFIT''), Growth and Income Portfolio (''GIP'' together with MFG, MFT, MFSG, MFVAT, and MFIT, the ''Trusts''), all existing and future series of the Trusts, and any existing or future registered investment companies and their series, that are advised or subadvised by the Advisers.[2]

SUMMARY OF APPLICATION: Applicants request an order to permit the Portfolio to engage in certain principal transactions with JPMSI.

FILING DATES: The application was filed on July 13, 2001, and amended on April 22, 2002. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING ON NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 10, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Philip von Türk, Esq., JP Morgan Chase Bank, Legal Department, 345 Park Avenue, 5th Floor, New York, NY 10154–1002; and Robert B. Adams, Esq. and Merrill B. Stone, Esq., Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust is an open end management investment company registered under the Act, MFG, MFT, MFSG, MFST, MFVAT, MFIT and MFMIT are organized as business trusts under the laws of the Commonwealth of Massachusetts. GIP is organized as a trust under the laws of the State of New York. Each Trust, consistent with its stated investment objectives and policies, may invest in high quality short-term taxable money market instruments and repurchase agreements.

2. JPMFAM, a Delaware corporation, is a wholly-owned subsidiary of JP Morgan Chase Bank (''Chase''), a New York banking corporation and wholly-owned subsidiary of JPM, a Delaware corporation. JPMFAML is a United Kingdom corporation and a wholly owned subsidiary of Chase. JPMFAM and JPMFAML are each registered as investment advisers under the Investment Advisers Act of 1940 (the ''Advisers Act''). Currently, each Portfolio has an investment advisory agreement with JPMFAM under which JPMFAM provides investment advisory and management services. JPMFAM, in turn, has entered into subadvisory agreements with JPMFAML for certain of the Portfolios.

3. JPMSI is a wholly owned subsidiary of JPM and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''). JPMSI, a primary dealer in U.S. Government securities, is one of the largest dealers in commercial paper, repurchase agreements and other money market instruments in the United States.

4. Applicants state that the Advisers and JPMSI are functionally independent of each other. JPMSI and the Advises operate as completely separate entities under the umbrella of JPM, the parent holding company. While JPMSI and the Advisers are under common control, each entity has its own separate directors, officers and employees, is separately capitalized, maintains its

[1] JPMFAM, JPMFAML and the Future Advisers are referred to collectively in this notice as the Advisers. Any Adviser that currently intends to rely on the requested order is named as an applicant in this application. Any other Adviser that relies on the order in the future will comply with the terms and conditions of this application.

[2] The Trusts, all existing or future series of the Trusts, and any existing or future registered investment companies and their series that are advised or subadvised by the Advisers are referred to collectively in this notice as the ''Portfolios''. Any Portfolio that currently intends to rely on the requested order is named as an applicant in this application. Any other Portfolio that relies on the order in the future will comply with the terms and conditions of this application.

own separate books and records and operates on different sides of walls of separate with respect to the Portfolios and *Eligible Securities*.[3] The Advisers maintain offices physically separate from JPMSI.

5. Investment decisions for the Portfolios are determined solely by the Advisers. The portfolio managers and other employees that are responsible for the investment of the Portfolios are employed solely by one of the Advisers (and not JPMSI), and have lines of reporting responsibility solely within the Advisers. The compensation of personnel assigned to an Adviser will not depend on the volume or nature of trades with JPMSI, except to the extent that such trades may affect the profits and losses of JPM and its subsidiaries as a whole.

6. The portfolio securities in which the Portfolios invest that are the subject of this application include taxable money market instruments and repurchase agreements. Practically all trading in money market instruments takes place in over-the-counter markets consisting of groups of dealers who are primarily major securities firms or large commercial banks. Money market securities generally are traded in lots of $1,000,000 or more on a net basis and normally do not involve payment of either brokerage commissions or transfer taxes. The cost of portfolio transactions to the Portfolios consistent primarily of dealer or underwriter spreads. Spreads vary somewhat among money market instruments, but generally spread level for short-term investment grade products are in the range of 5 to 10 basis points (.05% to .10%). In the Portfolios' experience, there is not a great deal of variation in the spreads on money market instruments quoted by the various dealers, except perhaps during turbulent market conditions.

7. The money market consists of an elaborate telephonic and electronic communications network among dealer firms, principal issuers of money market instruments and principal institutional buyers of such instruments. Because the money market is a dealer market, there is not a single obtainable price for a given instrument that generally prevails at any given time. A dealer acts either as ''agent'' on behalf of issuer clients or as ''principal'' for its own account. In either capacity, a dealer posts rates throughout its internal, private distribution network that are intended to reflect ''market clearing price levels,'' as determined by the dealer. Only customers of the dealer seeking to purchase money market instruments have access to these postings.

8. Because of the variety of types of money market instruments and other factors, the money markets tends to be somewhat segmented. The markets for various types of instruments will vary in terms of price, volatility, liquidity and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there may be significant differences in yield among the various types of instruments, and even within a particular instrument category, depending upon the maturity of the instrument and the credit quality of the issuer. Moreover, from time to time, segmenting exists within money market securities with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company, whether the issuer is domestic or foreign and whether the securities are asset-backed or unsecured. Because dealers tend to specialize in certain types of money market instruments, the particular needs of a potential buyer or seller with respect to certain type of security, maturity or credit quality may limit the number of dealers who can provide optimum pricing and execution. Hence, with respect to any given type of instrument, there may be only a few dealers who can be expected to have the instrument available and be in a position to quote an acceptable price.

9. JPMSI is among the largest major dealers in the taxable money market instruments and repurchase agreements, ranking among the top firms in each of the major markets and product areas.[4] As of April 2001; JPMSI had become the third largest dealer in terms of number of U.S. commercial paper programs. When it conducted an informal survey in September 1999, CSI was recognized as the most active secondary trading firm in the bankers acceptance market. JPMSI also is one of the leading participants in the medium-term note (''MTNs'') market. MTNs are offered continuously in public or private offerings, with maturities beginning at nine months. Because commercial paper is not issued for a maturity longer than nine months and bankers acceptances are not issued for a maturity of longer than six months, there are fewer longer term investment alternatives than shorter term investment alternatives for the Portfolios. Thus, MTNs represent a significant portion of the longer-term money market investment alternatives. In 2000, JPMSI ranked as the third largest manager or co-manager of MTN programs in the United States in terms of proceeds ($37.9 billion) and market share (15.1%). Applicants further believe that JPMSI plays a relatively significant role in the repurchase agreement market with average outstandings from $35 billion to $45 billion in 2001. Applicant believes that it is one of the top ten leading dealers in repurchase agreements and estimates that the ten leading dealers control approximately 80% of the market for repurchase agreements.

10. Applicants state that because of substantial consolidation in the money market industry, there are fewer major dealers who are active in the market than was the case only a few years ago. In light of this consolidation, applicants believe that it has become very important for investors to have access to as many dealers who are actively engaged in the money market as possible. Applicants state that there are far fewer sources of information available to investors. Applicants also contend that the decline in the number of active money market dealers has affected the competition in the pricing of investment opportunities.

11. Subject to the general supervision of the trustees of each of the Trusts (collectively, the ''Trustees''), the Advisers are responsible for making investment decisions and for the placement of portfolio transactions. The Portfolios have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an Adviser must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type and difficulty of the transaction involved in the dealer's general execution and operational facilities.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c) and 17(b) of the Act exempting certain transactions from the provisions of section 17(a) of

[3] Italicized terms are defined as set forth in paragraph (a) of rule 2a–7, unless otherwise indicated.

[4] Applicants state that JPM was formed by the merger of The Chase Manhattan Corporation (''CMC'') and J.P. Morgan & Co. Inc. (''JPM&CO.'') on December 2000. At the time of the merger, J.P. Morgan Securities Inc. (''Old JPMSI'') was a broker-dealer subsidiary of JPM&Co. and Chase Securities Inc. (''CSI'') was a broker-dealer subsidiary of CMC. The money market operations of Old JPMSI and CSI were combined in January 2001 (''Combination'') and Old JPMSI merged into CSI (which became the current JPMSI) in May 2001. The rankings and market share figures discussed in this notice generally reflect the current money market operations of JPMSI, the combined money market operations of Old JPMSI and CSI beginning in January 2001, and, prior to the Combination, the combined operations of Old JPMSI and CSI on a pro forma basis.

the Act to permit JPMSI, acting as principal, to sell to or purchase from the Portfolios certain money market instruments and to enter into repurchase agreements, subject to the conditions set forth below.

2. Section 17(a) of the Act generally prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Because an Adviser is an affiliated person of the Portfolios it advises and JPMSI and the Advisers are under common control, the Portfolios are currently prohibited from conducting portfolio transactions with JPMSI in transactions in which JPMSI acts as principal.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction, is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants contend that the rationale for the proposed order is based upon the decreased liquidity in the money market, the major and growing role played in the money market by JPMSI and the special requirements of the Portfolios with respect to their portfolio transactions. In particular applicants note the following.

(a) With over 53 billion invested in short term money market instruments and repurchase agreements as of January 31, 2002, the Portfolios are major buyers and sellers in the money market with a strong need for a constant flow of large quantities of high quality money market instruments and repurchase agreements. The applicants believe that access to such a significant dealer as JPMSI in these markets increases the Portfolios' abilities to manager their portfolios effectively.

(b) The fact that the Portfolios regularly invest in securities with short maturities and repurchase agreements, combined with the active portfolio management techniques employed by the Advisers, often results in high portfolio activity and the need to make numerous purchases and sales of securities and instruments. Such high portfolio activity makes the need to obtain suitable portfolio securities and best price and execution especially compelling.

(c) JPMSI is such a significant factor in the money market, including the market for repurchase agreements, that being unable to deal directly with JPMSI may, upon occasion, deprive the Portfolios of obtaining best price and execution.

(d) The money market, including the market for repurchase agreements, is highly competitive, and removing a competitive factor as important as JPMSI from the dealers with which the Portfolios may conduct principal transactions may indirectly deprive the Portfolios of obtaining best price and execution even when the Portfolios trade with other dealers.

5. Applicants believe that the requested order will provide the Portfolios with broader and more complete access to the money market, which is necessary to carry out the policies and objectives of each of the Portfolios in obtaining the best price, execution and quality in all portfolio transactions, and will provide the Portfolios with important new information sources in the money market, to the direct benefit of investors in the Portfolios. Applicants submit that these reasons apply equally to Portfolios that are not money market funds even though they invest in money market instruments to a lesser extent. Applicants believe that the transactions contemplated by the application are identical to those in which they currently are engaged except for the proposed participation of JPMSI, and that such transactions are consistent with the policies of the Portfolios as recited in their registration statements and reports filed under the Act.

6. Applicants believe that the procedures set forth with respect to transactions with JPMSI are structured in such a way as to insure that the transactions will be, in all instances, reasonable and fair, and will not involve overreaching on the part of any person concerned, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Applicants' Conditions

1. Transactions Subject to the Exemption—The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. The principal transactions which may be conducted pursuant to the exemption will be limited to transactions in *Eligible Securities.* To the extent a Portfolio is subject to rule 2a-7, such *Eligible Securities* must meet the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a-7. To the extent a Portfolio is not subject to rule 2a-7, such *Eligible Securities* must meet the requirements of clauses (i), (iii) and (iv) of paragraph (c)(3) of Rule 2a-7. Additionally:

(a) No Portfolio shall make portfolio purchases pursuant to the exemption that would result directly or indirectly in a Portfolio investing pursuant to the exemption more than 2% of its *Total Assets* (or, in the case of a Portfolio that is not subject to Rule 2a-7, more than 2% of the total of its cash, cash items and *Eligible Securities*) in securities which, when acquired by the Portfolio (either initially or upon any subsequent roll over) were *Second Tier Securities;* provided that any Portfolio may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to this limitation.

(b) The exemption shall not apply to an *Unrated Security* other than a *Government Security.*

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by JPM or any affiliated person thereof, or to any security subject to a *Demand Feature* or *Guarantee* issued by JPM or any affiliated person thereof.

2. Repurchase Agreement Requirements—The Portfolios may engage in repurchase agreements with JPMSI only if JPMSI has: (a) net capital, as defined in rule 15c3–1 under the 1934 Act, of at least $100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. JPMSI will furnish the Advisers with financial statements for its most recent fiscal year and the most recent semi-annual financial statements made available to customers. The Advisers shall

determine that JPMSI complies with the above requirements and with other repurchase agreement guidelines adopted by the Trustees. Each repurchase agreement will be *Collateralized Fully.*

3. Volume Limitations on Transactions—Transactions other than repurchase agreements conducted pursuant to the exemption shall be limited to no more than 25% of (a) the direct or indirect purchases or sales, as the case may be, by each Portfolio of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by JPMSI of *Eligible Securities* other than repurchase agreements. Transactions comprising repurchase agreements conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements directly or indirectly entered into by the relevant Portfolio and (b) the repurchase agreements transacted by JPMSI. These calculations shall be measured on an annual basis (the fiscal year of each Portfolio and of JPMSI) and shall be computed with respect to the dollar volume thereof.

4. Information Required to Document Compliance with Price Tests—Before any transaction may be conducted pursuant to the exemption, the relevant Portfolio or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (5) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Portfolios or the Advisers must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument type, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have in their inventories or otherwise have access to money market securities of the categories and the types desired and who, in the experience of the Portfolios and the Advisers, are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Portfolios and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Portfolios or the Advisers must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

5. Price Tests—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Portfolios and the Advisers, that the price available from JPMSI is at least as favorable as that available from other sources. In the case of ''swaps'' involving trades of one security for another, the price test will be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Portfolios and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

6. Permissible Spread—JPMSI's spreads in regard to any transaction with the Portfolios will be no greater than its customary dealer spreads which in turn will be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

7. Parties Must Be Factually Independent—The Adivsers, on the one hand, and JPMSI, on the other, will operate on different sides of appropriate walls of separation with respect to the Portfolios and *Eligible Securities.* The walls of separation will include all of the following characteristics, and such others as may from time to time be considered reasonable by JPMSI and the Advisers to facilitate the factual independence of the Advisers from JPMSI.

(a) Each of the Advisers will maintain offices physically separate from those of JPMSI.

(b) The compensation of persons assigned to any of the Advisers (i.e., executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the advisers for the Portfolios with JPMSI under this exemption, except to the extent that such trades may affect the profits and losses of JPM and its subsidiaries as a whole.

(c) JPMSI will not share any of its respective profits or losses on such transactions with any of the Advisers, except to the extent that such profits and losses affect the general firmwide compensation of JPM and its subsidiaries as a whole.

(d) Personnel assigned to the Advisers' investment advisory operations on behalf of the Portfolios will be exclusively devoted to the business and affairs of one or more of the Advisers.

(e) Personnel assigned to JPMSI will not participate in the decision-making process for the Advisers or otherwise seek to influence the Advisers other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and JMPSI, on the other, may nonetheless maintain affiliations other than with respect to the Portfolios, and in addition with respect to the Portfolios as follows:

(i) Adviser personnel may rely on research, including credit analysis and reports prepared internally by various subsidiaries and divisions of JPMSI.

(ii) Certain senior executives of JPM with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of JPM are not precluded from exercising those functions over the Advisers because they oversee JPMSI as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Portfolios or the Advisers of Orders in respect of *Eligible Securities* with JPMSI.

8. Record-Keeping Requirements—The Portfolios and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Portfolio shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption showing for each transaction: the name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; and whether the security was a *First Tier Security* or a *Second Tier Security.* The records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: The names of the dealers; the names of the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities.*

(b) Each Portfolio shall maintain a ledger or other record showing, on a daily basis, the percentage of the

Portfolio's *Total Assets* (or, in the case of a Portfolio that is not subject to rule 2a–7, the percentage of the total of its cash, cash items and *Eligible Securities*) represented by *Second Tier Securities* acquired from JPMSI.

(c) Each Portfolio will maintain records sufficient to verify compliance with the volume limitations contained in condition (3), above. JMPSI will provide the Portfolios with all records and information necessary to implement this requirement.

(d) Each Portfolio will maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition (2), above.

The records required by this condition (8) will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1).

9. Guidelines—Each of the compliance departments of the Advisers and of JPMSI (the ''Compliance Departments'') will prepare and, as necessary update guidelines for personnel of the Advisers or JPMSI, as the case may be, to make certain that transactions conducted pursuant to the exemption comply with the conditions of the exemption, and that the parties generally maintain arm's length relationships. In training personnel of JPMSI, particular emphasis will be given to the fact that the Portfolios are to receive rates as favorable as other institutional purchasers buying the same quantities. The Compliance Departments will periodically monitor the activities of JPMSI and the Advisers to make certain that the conditions set forth in the exemption are adhered to.

10. Audit Committee Review—The Audit Committees, consisting of Trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will prepare, periodically review and update the guidelines for the Advisers and JPMSI to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Portfolios, the Advisers and JPMSI in this regard to ensure that these matters are being accomplished.

11. Scope of Exemption—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a–7.

12. Board Review—The Trustees, including a majority of the Independent Trustees, have approved the Portfolio's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Portfolios is in the best interests of the Portfolios and their investors. The minutes of the meetings of the Trustees at which this approval was given reflect in detail the reasons for the Trustees' determinations. The Trustees will review no less frequently than annually the Portfolios' participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Portfolios' participation in such transactions continues to be in the best interests of the Portfolios and their investors. Such review will include (but not be limited to) (a) a comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of JPMSI in the market for that type of security, and (b) a determination that the Portfolios are maintaining appropriate trading relationships with other sources for each type of security to ensure that there are appropriate sources for the quotations required by condition (4) above. The minutes of the meetings of the Trustees at which such determinations are made will reflect in detail the reasons for the Trustees' determinations.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–12641 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following additional meeting during the week of May 13, 2002:

An additional closed meeting was held on Tuesday, May 14, 2002, at 11 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting held on Tuesday, May 14, 2002, was:

Institution and settlement of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 15, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–12638 Filed 5–15–02; 4:15 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45921; File No. SR–CHX–2002–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Amend the Rules Relating to the Composition of the CHX's Minor Rule Violation Panel

May 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend the rules relating to the composition of the CHX's Minor Rule Violation Panel (''Panel''). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Article XII

Discipline and Trial Proceedings

* * * * *

Minor Rule Violations

RULE 9.(a) No change in text.

(b) Procedure for Imposing Fines. In the event that the staff of the Exchange determines that a member, member organization, associated person or registered or non-registered employee of a member or member organization has violated a rule of the Exchange set forth in paragraph (h) of this Rule, and the Exchange staff desires to take action under this Rule 9, the staff shall present the facts supporting the violative conduct to [the] *a* Minor Rule Violation Panel. The accused shall not have the right to attend such presentation nor shall the accused have the right to present any evidence or testimony at such presentation. [The] *A* Minor Rule Violation Panel may (i) accept the staff's recommendation and impose sanctions on behalf of the Exchange in accordance with this Rule 9, (ii) reject the staff's recommendation, or (iii) recommend that the Exchange commence a formal disciplinary proceeding. [The] *A* Minor Rule Violation Panel shall have no authority, however, to authorize the initiation of a formal disciplinary proceeding. In the event [the] *a* Minor Rule Violation Panel recommends that the Exchange commence a formal disciplinary proceeding, the staff shall either (i) issue a report to the Chief Executive Officer in accordance with Article XII, Rule 1(a), recommending that formal charges be brought or (ii) advise the Minor Rule Violation Panel that the staff will not recommend that the Exchange commence a formal disciplinary proceeding. In the event that the staff chooses alternative (ii) from the preceding sentence, the matter shall be returned to the Minor Rule Violation Panel *that recommended the commencement of the formal disciplinary proceeding,* which shall then impose a fine in accordance with the provisions of this Rule 9.

[The] *One or more* Minor Rule Violation Panel*s* shall be appointed, from time to time, by the Chief Executive Officer and shall *each* consist of three persons—one member of the Rules Subcommittee of the Committee on Floor Procedure, one member of the Committee on Floor Procedure [who is not a member of the Rules Subcommittee], and one floor member who is not a member of the Committee on Floor Procedure or *the Rules Subcommittee* [any of its subcommittees].

Notwithstanding anything in this paragraph (b) to the contrary, the Committee on Floor Procedure shall have jurisdiction to impose a fine pursuant to this Rule for violations of (h)(ii)(7) and (8) of this Rule relating to decorum on the trading floor. However, the Committee on Floor Procedure and [the] *a* Minor Rule Violation Panel shall not, collectively, impose more than one fine pursuant to this Rule 9 relating to the same underlying violation and incident.

(c)–(h) No change in text.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the rules relating to the composition of the Panel. The Panel is a three-person group charged with evaluating rule violations that fall under the Exchange's Minor Rule Violation Plan and assessing fines in response to that conduct.

The proposed rule change would allow the appointment of additional Panels. In recent months, it has become increasingly difficult for Panel members to balance their responsibilities as Panel members with their responsibilities as active members of the trading floor community. The ability to appoint additional Panels would relieve some of the workload of the current Panel members and ensure that potential minor rule violations are heard by a Panel as soon as possible. The Exchange's Market Regulation staff will work with each Panel to ensure that their decisions provide consistent sanctions for similar offenses.

The proposed rule change also would remove a current restriction on the composition of the Panel that makes it difficult to find a sufficient number of persons to serve as a member of this group. Under the current rules, the Panel consists of: (1) One member of the Rules Subcommittee; (2) one member of the Committee on Floor Procedure who is not on the Rules Subcommittee; and (3) one floor member who is not on the Committee on Floor Procedure or on any of its subcommittees (such as the Rules Subcommittee). [3]

The proposed rule change would modify this composition so that the Panel would consist of: (1) One member of the Rules Subcommittee; (2) one member of the Committee on Floor Procedure (whether or not he or she is on the Rules Subcommittee); and (3) one floor member who is not on the Committee on Floor Procedure, but could be on one or more of its subcommittees (but not the Rules Subcommittee).

In recent years, the Exchange's floor members have become more active on various Exchange committees, including on the various subcommittees of the Committee on Floor Procedure. As a result, they often are not eligible to fill the second or third positions on the Panel. The proposed rule change would help ensure that a sufficient number of members are eligible to be selected to serve on the Panel.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] In particular, the CHX believes the proposed rule change is consistent with Section 6(b)(5) of the Act [5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that potential minor rule violations are addressed as soon as possible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] The Committee on Floor Procedure has several subcommittees, including the Rules Subcommittee, the Floor Broker Technical Subcommittee, the Specialist Technical Subcommittee and the Space Allocation Subcommittee.

[4] 15 U.S.C. 78(f)(b).

[5] 15 U.S.C. 78(f)(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–12 and should be submitted by June 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12568 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–U

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45924; File No. SR–CHX–2002–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

May 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice hereby is given that on April 26, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a provision of its membership dues and fees schedule (the ''Schedule'') governing assessment of transaction fees. The text of the proposed rule change follows. Proposed new language is italicized; proposed deletions are in brackets.

Membership Dues and Fees

* * * * *

F. Transaction and Order Processing Fees

* * * * *

6. Transaction Fees

* * * * *

e. *In Nasdaq/NM securities, a*[A]gency *executions* [orders in NASDAQ/NM securities] executed through a floor broker *and market maker executions.*

f. *In Dual Trading System issues, a*[A]gency *executions* [orders in Dual Trading System Securities] executed through a floor broker *and market maker executions.*

g. All other *MAX* orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend a provision of the Schedule governing assessment of transaction fees. The Schedule contains provisions assessing various transaction fees and order processing fees. Transaction fees are assessed based on factors including (a) the type of order executed on the Exchange, and (b) the type of member that facilitates execution of the order on the Exchange.

A previous change to the provisions governing transaction fees was intended to provide for a transaction fee applicable to certain manual orders that are not executed by a specialist, *i.e.,* agency orders executed through a floor broker or executions by a market maker. The Exchange believes that it is appropriate to edit this provision to reflect the intent that the provision applies to all manual orders not executed by a specialist (other than executions by floor brokers in their capacity as principals). Significantly, the proposed edit set forth in Exhibit A reflects current billing practice; the change to the fee schedule thus will not result in assessment of any additional transaction fees.

In addition, the Exchange proposed to clarify that the catch-all provision governing transaction fees, subsection g., only applied to all other ''MAX'' orders.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on May 9, 2002.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange relating to this submission. [6]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) thereunder.[8] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–13 and should be submitted by June 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–12569 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–P

[6] At the request of CHX, this sentence was revised to clarify that the Exchange did not solicit comment from its members. Telephone call between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Ellen Neely, Senior Vice President and General Counsel, CHX, on May 14, 2002.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45920; File No. SR–NASD–2002–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. to Establish Listing Standards and Listing Fees for Portfolio Depository Receipts and Index Fund Shares

May 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.[3] On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting partial accelerated approval to the proposal.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 3, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for Portfolio Depository Receipts (''PDRs'') and Index Fund Shares (''Fund Shares'') will be from 9:30 a.m. to 4 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees.

[4] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 13, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq removed the term ''member organization'' throughout its proposed rule text and proposal.

[5] Nasdaq requested accelerated approval of all portions of the proposal except those that deal with its proposed new listing fees.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish listing standards and listing fees for PDRs and Fund Shares.

Proposed new language is *italicized;* proposed deletions are in [brackets].

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4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), [or] (g), *(h), (i), or (j)* below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualification issues, exception special situations, are included on the next inclusion date established by Nasdaq.

(a)–(h) No change.

(i) Portfolio Depository Receipts

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Portfolio Depository Receipt. The term ''Portfolio Depository Receipt'' means a security:

(i) that is based on a unit investment trust (''Trust'') which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount;

(iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the ''Portfolio Deposit''; and

(iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of

securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(B) Reporting Authority. The term ''Reporting Authority'' in respect to a particular series of Portfolio Depository Receipts means Nasdaq, a wholly-owned subsidiary of Nasdaq, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, and other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Portfolio Depository Receipts must be designated by Nasdaq; the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.

(2) The provisions of this Rule apply only to series of Portfolio Depository Receipts that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. Nasdaq will inform members regarding application of this Rule to a particular series of Portfolio Depository Receipts by means of an Information Circular prior to commencement of trading in such series.

Nasdaq requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts].''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Depository Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

(3) Nasdaq may approve a series of Portfolio Depositary Receipts for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depository Receipts, the component stocks of an index or portfolio underlying such series of Portfolio Depository Receipts shall meet the following criteria:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include a minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

(B) Index Methodology and Calculation.

(i) The index underlying a series of Portfolio Depository Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(iii) The current index value will be disseminated every 15 seconds over the Nasdaq Trade Dissemination System.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. NASD Regulation will implement written surveillance procedures for Portfolio Depository Receipts.

(4) Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by Nasdaq.

(5) Nasdaq may list and trade Portfolio Depository Receipts based on one or more stock indexes or securities portfolios. The Portfolio Depository Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depository Receipts are based shall be selected by Nasdaq or its agent, a wholly-owned subsidiary of Nasdaq, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(6) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—for each Trust, Nasdaq will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing—following the initial twelve month period following formation of a Trust and commencement of trading on Nasdaq, Nasdaq will consider the suspension of trading in or removal from listing of a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of a Trust, Nasdaq requires that Portfolio Depository Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term—the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Voting—voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(7) Neither Nasdaq, the Reporting Authority nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depository Receipts, resulting from any negligent act or omission by Nasdaq, the Reporting Authority, or any agent of Nasdaq or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(j) Index Fund Shares

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Index Fund Share. The term ''Index Fund Share'' means a security:

(i) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index;

(ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and

(iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(B) Reporting Authority. The term ''Reporting Authority'' in respect of a particular series of Index Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by Nasdaq; the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.

(2) The provisions of this Rule apply only to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. Nasdaq will inform members regarding application of this Rule to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

Nasdaq requires that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or The Nasdaq Stock Market. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Index Fund Shares.

(3) Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall

have a minimum market value of at least $75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include a minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

(B) Index Methodology and Calculation

(i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(iii) The current index value will be disseminated every 15 seconds over the Nasdaq Trade Dissemination System.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. NASD Regulation will implement written surveillance procedures for Index Fund Shares.

(4) Trading will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by Nasdaq.

(5) Nasdaq may list and trade Index Fund Shares based on one or more foreign or domestic stock indexes or securities portfolios. Each issue of Index Fund Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(6) Each series of Index Fund Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—for each series, Nasdaq will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing—following the initial twelve month period following commencement of trading on Nasdaq of a series of Index Fund Shares, Nasdaq will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

(i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of an open-end management investment company, Nasdaq requires that Index Fund Shares issued in connection with such entity be removed from listing.

(C) Voting—voting rights shall be as set forth in the applicable open-end management investment company prospectus.

(7) Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

4540. Portfolio Depository Receipts and Index Fund Shares

(a) Entry Fee

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares in The Nasdaq National Market, it shall pay to The Nasdaq Stock Market, Inc. a listing fee of $5,000 (which shall include a $1,000 non-refundable processing fee).

(2) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(3) If the application is withdrawn or is not approved, the entry fee (less the non-refundable processing fee) shall be refunded.

(b) Annual Fee

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	$6,500
1+ to 2 million shares	7,000
2+ to 3 million shares	7,500
3+ to 4 million shares	8,000
4+ to 5 million shares	8,500
5+ to 6 million shares	9,000
6+ to 7 million shares	9,500
7+ to 8 million shares	10,000
8+ to 9 million shares	10,500
9+ to 10 million shares	11,000
10+ to 11 million shares	11,500
11+ to 12 million shares	12,000
12+ to 13 million shares	12,500
13+ to 14 million shares	13,000
14+ to 15 million shares	13,500
15+ to 16 million shares	14,000
Over 16 million shares	14,500

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be included in The Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority

or in more recent information held by Nasdaq.

(3) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to adopt listing standards and listing fees for PDRs and Fund Shares. A description of the criteria is set forth below.

a. *Portfolio Depository Receipts.* i. *Listing Requirements.* Nasdaq proposes to adopt criteria for listing and trading PDRs, which are securities that: (1) Are based on a unit investment trust (''Trust'') which holds the securities which comprise an index or portfolio underlying a series of PDRs; (2) are issued by the Trust in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount; (3) when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the ''Portfolio Deposit'; and (4) pay holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the PDRs, less certain expenses and other charges as set forth in the Trust prospectus.

In connection with initial listing, Nasdaq represents that it will establish, for each Trust, a minimum number of PDRs required to be outstanding at the time of commencement of trading on Nasdaq.

With respect to continued listing, following the initial twelve month period after formation of a Trust and commencement of trading on Nasdaq, Nasdaq represents that it will consider the suspension of trading in or removal from listing of a Trust upon which a series of PDRs is based under any of the following circumstances: (1) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of PDRs for 30 or more consecutive trading days; (2) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or (3) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable. Upon termination of a Trust, Nasdaq represents that it will require that PDRs issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

ii. *Standards to Permit Trading of PDRs Pursuant to Rule 19b–4(e) under the Act.* Nasdaq further proposes to adopt generic listing standards to permit the trading of PDRs pursuant to Rule 19b–4(e) under the Act.[6] Rule 19b–4(e) under the Act permits self-regulatory organizations (''SROs'') to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b) of the Act. Accordingly, Nasdaq proposes to adopt the following listing standards in order to list PDRs pursuant to Rule 19b–4(e) under the Act.

Upon initial listing of PDRs, component stocks must in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million. In addition, the component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio. Moreover, the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks. Lastly, all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

The index underlying a series of PDRs will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Nasdaq Trade Dissemination System. The Reporting Authority will disseminate for each series of PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDRs is required to be outstanding at the start-up of trading. Trading for each series of PDRs will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m., as specified by Nasdaq.[7] Nevertheless, as with other listed securities, quotes and trades in PDRs may be reported using Nasdaq systems that operate in the extended-hours session from 4 p.m. to 6:30 p.m.[8]

iii. *Disclosure.* Nasdaq represents that it will require members to provide all purchasers of newly issued PDRs with a prospectus. Since the PDRs will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933 (''Securities Act'')[9] will apply to all investors in PDRs, including secondary market purchases on Nasdaq.

[6] 17 CFR 240.19b–4(e).

[7] At initiation, Nasdaq represents that trading in PDRs will occur until 4 p.m. Nasdaq understands that most other markets that trade PDRs extend their regular trading session until 4:15 p.m., and Nasdaq plans to extend its regular trading session until 4:15 p.m. as soon as technically feasible. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002.

[8] Trades after the end of the regular trading session will have a ''.T'' identifier, which will exclude them from the consolidated daily ''high,'' ''low,'' and ''close'' prices, but they would be included in the daily volume statistics. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002. *See also* Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999); and 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002).

[9] 15 U.S.C. 77e(b)(2).

With respect to a series of PDRs that are the subject of an order by the SEC exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''Investment Company Act''),[10] Nasdaq represents that it will inform members regarding disclosure obligations with respect to a particular series of PDRs by means of an Information Circular prior to commencement of trading in such series.

For these exempted series, Nasdaq represents that it will require that members provide to all purchasers of a series of PDRs a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of PDRs that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts].''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of PDRs.

iv. *Trading of PDRs.* Nasdaq represents that dealings in PDRs will be conducted pursuant to Nasdaq and the NASD's existing equity trading rules. Thus, Nasdaq's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Nasdaq equity rules and procedures would also apply.[11] In addition, NASD Regulation's surveillance procedures for PDRs will be the same as the current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

Prior to the commencement of trading in PDRs, Nasdaq represents that it will issue an Information Circular to members highlighting the characteristics of purchases in PDRs. The Information Circular will discuss, among other things, the special characteristics and risks of trading this type of security, inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDRs, and the applicability of the suitability rules. Specifically, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[12] Furthermore, as new products are introduced from time to time, Nasdaq believes that it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products.

With respect to trading halts, Nasdaq represents that the trading of PDRs would be halted, along with trading of all other listed or traded stocks, in the event the ''circuit breaker'' thresholds are reached.[13] Nasdaq represents that it will disclose the policies regarding trading halts in PDRs in the Information Circular. For a PDR based on an index, such policies would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value.

b. *Index Fund Shares.* i. *Listing Requirements.* Nasdaq also proposes to adopt criteria for the listing and trading of Fund Shares, which are securities that: (1) Are issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (2) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (3) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

In connection with initial listing, Nasdaq represents that it will establish, for each series, a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

With respect to continued listing, following the initial twelve month period after commencement of trading on Nasdaq of a series of Index Fund Shares, Nasdaq represents that it will consider the suspension of trading in or removal from listing of such series under any of the following circumstances: (1) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable. Upon termination of an open-end management investment company, Nasdaq represents that it will require that Index Fund Shares issued in connection with such entity be removed from listing.

ii. *Standards to Permit Trading of Index Fund Shares Pursuant to Rule 19b–4(e) under the Act.* Nasdaq also proposes to adopt generic listing standards to permit the trading of Fund Shares pursuant to Rule 19b–4(e) under the Act. As previously mentioned, Rule 19b–4(e) under the Act permits SROs to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b) of the Act. Accordingly, Nasdaq proposes to adopt the following listing standards in order

[10] 15 U.S.C. 80a–24(d)

[11] Pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions of PDRs on The Nasdaq National Market.

[12] *See* NASD Rule 2310 and NASD IM–2310–2. In addition, NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, a customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[13] *See* NASD IM–4120–4.

to list Fund Shares pursuant to Rule 19b–4(e) under the Act.

Upon initial listing of Fund Shares, component stocks must in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million. In addition, the component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio. Moreover, the most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks. Lastly, all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

The index underlying a series of Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Nasdaq Trade Dissemination System. The Reporting Authority will disseminate for each series of Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of Fund Shares is required to be outstanding at the start-up of trading. Trading for each series of Fund Shares will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m., as specified by Nasdaq. [14] Nevertheless, as with other listed securities, quotes and trades in Fund Shares may be reported using Nasdaq systems that operate in the extended-hours session from 4 p.m. to 6:30 p.m.[15]

iii. Disclosure. Nasdaq represents that it will require members to provide all purchasers of newly issued Index Fund Shares with a prospectus. Since the Fund Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act[16] will apply to all investors in Index Fund Shares, including secondary market purchases on Nasdaq.

With respect to a series of Index Fund Shares that are the subject of an order by the SEC exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act,[17] Nasdaq represents that it will inform members regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

For these exempted series, Nasdaq represents that it will require that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or The Nasdaq Stock Market. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].''

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Index Fund Shares.

iv. Trading of Fund Shares. Nasdaq represents that dealings in Fund Shares will be conducted pursuant to Nasdaq and the NASD's existing equity trading rules. Thus, Nasdaq's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Nasdaq equity rules and procedures would also apply.[18] In addition, NASD Regulation's surveillance procedures for Fund Shares will be the same as the current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

Prior to the commencement of trading in Fund Shares, Nasdaq represents that it will issue an Information Circular to members highlighting the characteristics of purchases in Fund Shares. The circular will discuss, among other things, the special characteristics and risks of trading this type of security, inform members of the requirement to deliver a prospectus to investors purchasing Fund Shares prior to or concurrently with the confirmation of a transaction, and the applicability of suitability rules. Specifically, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[19]

[14] At initiation, Nasdaq represents that trading in Fund Shares will occur until 4 p.m. Nasdaq understands that most other markets that trade Fund Shares extend their regular trading session until 4:15 p.m., and Nasdaq plans to extend its regular trading session until 4:15 p.m. as soon as technically feasible. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002.

[15] Trades after the end of the regular trading session will have a ''.T'' identifier, which will exclude them from the consolidated daily ''high,'' ''low,'' and ''close'' prices, but they would be included in the daily volume statistics. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002. *See also* Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999); and 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002).

[16] 15 U.S.C. 77e(b)(2).

[17] 15 U.S.C. 80a–24(d).

[18] Pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions of Fund Shares on The Nasdaq National Market.

[19] *See* NASD Rule 2310 and NASD IM–2310–2. In addition, NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, a customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Furthermore, as new products are introduced from time to time, Nasdaq represents that it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products.

With respect to trading halts, the trading of Fund Shares would be halted, along with trading of all other listed or traded stocks, in the event the ''circuit breaker'' thresholds are reached.[20] Nasdaq represents that it will disclose the policies regarding trading halts in Fund Shares in the Information Circular. For a Fund Share based on an index, such policies would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value.

c. Listing Fees. In addition to listing standards, Nasdaq also proposes to adopt a new listing fee schedule for PDRs and Fund Shares. With respect to entry fees, each series of PDRs and Fund Shares will be assessed a $5,000 fee, which Nasdaq states is significantly lower than the current entry fees for traditional domestic and foreign equity issues listing on The Nasdaq National Market (''National Market''). Moreover, the proposed annual fees for PDRs and Fund Shares also will be significantly less than the current fees for traditional domestic and foreign equity issues listed on the National Market. Nasdaq represents that the entry and annual fees are designed to cover the costs associated with the listing of PDRs and Fund Shares on the National Market, while allowing Nasdaq to compete for the listing of these securities with national securities exchanges.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act[21] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that PDRs and Fund Shares will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[22]

Nasdaq further believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(5) of the Act[23] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. The proposed listing fees for PDRs and Fund Shares are less than the current fees for traditional domestic and foreign equity issues listed on the National Market as the regulatory and client services costs associated with PDRs and Fund shares are lower than those for traditional equity issues. Furthermore, Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are designed to cover costs and allow Nasdaq to compete for the listing of these securities with national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, [24] for approving, prior to the thirtieth day after publication in the **Federal Register**, the portion of the rule proposal related to the listing and trading of PDRs and Fund Shares, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–45 and should be submitted by June 10, 2002.

V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

Nasdaq has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis, except the portions of the amended proposal related to its proposed listing fees. The Commission notes that it has previously approved the listing and trading of PDRs and Fund Shares on other exchanges.[25]

[20] *See* NASD IM–4120–4.

[21] 15 U.S.C. 78o–3(b)(6).

[22] *See* Securities Exchange Act Release No. 42988 (June 28, 2000), 65 FR 42041 (July 7, 2000).

[23] 15 U.S.C. 78o–3(b)(5). Nasdaq represents that it intended to refer to Section 15A(b)(5) of the Act instead of Section 15A(b)(6) of the Act in Amendment No. 1 under ''Statutory Basis.'' Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Sapna C. Patel, Attorney, Commission, on May 7, 2002.

[24] 15 U.S.C. 78s(b)(2).

[25] *See, e.g.,* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (listing and trading of PDRs on the American Stock Exchange LLC (''Amex'')); 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (listing and trading of Fund Shares on the Amex); 39660 (February 12, 1998), 63 FR 9026 (February 23, 1998) (listing and trading of PDRs on the Boston Stock Exchange, Inc. (''BSE'')); 42988 (June 28, 2000), 65 FR 42041 (July 7, 2000) (listing and trading of Fund Shares on the BSE); 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) (listing and trading of PDRs on the Chicago Stock Exchange, Inc.); 39268 (October 22, 1997), 62 FR 56211 (October 29, 1997) (listing and trading of PDRs on the Cincinnati Stock Exchange, Inc. (''CSE'')); 43620 (November 27, 2000), 65 FR 75740 (December 4, 2000) (listing and trading of Fund Shares on the CSE); and 43912 (January 31, 2001), 66 FR 9401 (February 7, 2001) (listing and trading of Fund Shares on the Philadelphia Stock Exchange, Inc.).

The Commission finds that the portion of the proposed rule change relating to the listing and trading of PDRs and Fund Shares, as amended, is consistent with the requirements of Section 15A(b)(6) of the Act [26] and the rules and regulations thereunder applicable to a national securities association.[27] The Commission believes that the listing and trading of PDRs and Fund Shares on Nasdaq will provide investors with a convenient and flexible way of participating in the securities markets. In particular, the Commission believes that the trading of PDRs and Fund Shares provides investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of PDRs and Fund Shares as an investment tool. The Commission also believes that PDRs and Fund Shares will benefit investors by allowing them to trade securities based on unit investment trusts and open-end management companies in secondary market transactions. Accordingly, the Commission finds that the portion of Nasdaq's proposal relating to listing standards for PDRs and Fund Shares, as amended, will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[28]

A. Benefits of PDRs and Fund Shares

The relatively low cost of individual PDRs and Fund Shares makes them attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks. Moreover, the Commission believes that PDRs and Fund Shares provide investors with several other advantages. In particular, investors are able to trade PDRs and Fund Shares continuously throughout the business day in secondary market transactions at negotiated prices.[29] In contrast, Investment Company Act Rule 22c–1 [30] limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Accordingly, PDRs and Fund Shares allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not otherwise available to retail investors; and (3) reduce transaction costs for trading a portfolio of securities.

The Commission believes that the listing and trading on Nasdaq of securities like PDRs and Fund Shares, which replicate the performance of a broad portfolio of stocks, can benefit the securities markets by, among other things, helping to reduce the volatility occasionally experienced in these markets.[31]

Although PDRs and Fund Shares are not leveraged instruments and will be regulated like equity instruments subject to Nasdaq's rules governing equity securities, the Commission believes that the unique nature of these products raises certain product design, disclosure, trading and other issues that must be adequately addressed. As discussed more fully below, the Commission believes that Nasdaq has adequately addressed these concerns.

C. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and Fund Shares. Investors purchasing PDRs and Fund Shares will be required to receive either a prospectus or, as discussed below, a product description of the PDRs and Fund Shares. If the PDR or Fund Share is not granted relief from prospectus delivery requirements of the Investment Company Act, then investors purchasing PDRs and Fund Shares will be required to receive a prospectus prior to or concurrently with the confirmation of the transaction. Because PDRs and Fund Shares will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act [32] will apply both to initial investors, and to all investors purchasing such securities in secondary market transactions on Nasdaq or the over-the-counter market.

If the particular series of PDRs or Fund Shares is subject to an order by the Commission exempting such series from the prospectus delivery requirements under Section 24(d) of the Investment Company Act,[33] Nasdaq members will provide a written description regarding the product to all PDR and Fund Share investors.

Thus, if the proposed PDRs and Fund Shares are granted relief from the prospectus delivery requirements of the Investment Company Act, they will be subject to proposed Nasdaq listing standards NASD Rules 4420(i)(2) and 4420(j)(2), which provide for the delivery of a product description for series of PDRs and Fund Shares that have been granted relief from the prospectus delivery requirements of the Investment Company Act. Under the proposed NASD Rule 4420(i)(2) and NASD Rule 4420(j)(2) listing standards, the delivery requirement will extend to a member carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make a product description available to its customers on the same terms as are directly applicable to members. In addition, proposed NASD Rule 4420(i)(2) and NASD Rule 4420(j)(2) provide that a member must deliver a prospectus to a customer upon request.[34]

The Commission also notes that Nasdaq will issue an Information Circular to members prior to the commencement of trading in PDRs or Fund Shares. Nasdaq represents that such Information Circular will highlight the general issues pertaining to the purchase of PDRs and Fund Shares and the specific characteristics of the PDRs or Fund Shares to be purchased. Nasdaq

[26] 15 U.S.C. 78o–3(b)(6).

[27] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78o–3(b)(6).

[29] Because of potential arbitrage opportunities, the Commission believes that PDRs and Fund Shares will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR or a Fund Share comparable to its net asset value, and therefore, arbitrage activity likely will be minimal.

[30] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of an open-end investment company generally is computed once daily Monday through Friday, usually after the market's close, as designated by the investment company's board of directors.

[31] *See* Division, SEC, The October 1987 Market Break (February 1988) and Division, SEC, Market Analysis of October 13, and 16, 1989 (December 1990).

[32] 15 U.S.C. 77e(b)(2).

[33] 15 U.S.C. 80a–24(d).

[34] This prospectus delivery requirement applies to member broker-dealers that use electronic communication networks.

represents that the Information Circular will discuss, among other things, the special characteristics and risks of trading this type of security, inform members of the obligation to deliver a prospectus or written description, as applicable, to purchasers of PDRs or Fund Shares, and the applicability of the suitability rules.

D. Listing and Trading of PDRs and Fund Shares

The Commission finds that adequate rules and procedures exist to govern the listing and trading of PDRs and Fund Shares. Nasdaq represents that PDRs and Fund Shares will be subject to Nasdaq and the NASD's equity trading rules. PDRs and Fund Shares will be deemed equity securities subject to all Nasdaq and NASD rules governing the trading of equity securities, including, among others, rules governing the listing and de-listing of securities, trading halts, notices to members, responsibilities of the specialist and customer suitability requirements.

Nasdaq represents that transactions for each series of PDRs and Fund Shares will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m., as specified by Nasdaq. [35] Nevertheless, as with other listed securities, quotes and trades in PDRs and Fund Shares may be reported using Nasdaq systems that operate in the extended-hours session from 4 p.m. to 6:30 p.m.[36] The Commission notes that these trading hours are consistent with those on other exchanges.

In addition, the Commission notes that a Reporting Authority will disseminate an estimate, updated every 15 seconds, of the value of a share of each series of PDRs and Fund Shares on Nasdaq's behalf. Nasdaq represents that such current value will be disseminated every 15 seconds over the Nasdaq Trade Dissemination System.

E. Surveillance

The Commission notes that Nasdaq has submitted surveillance procedures for the trading of PDRs and Fund Shares. The Commission believes that those procedures, which incorporate and rely upon existing NASD Regulation surveillance procedures governing equity securities, are adequate under the Act. Finally, the Commission believes that the surveillance procedures developed by the NASD are adequate to address concerns associated with the listing and trading of PDRs and Fund Shares, including any concerns associated with purchasing and redeeming Creation Units.

The Commission also notes that concerns are raised when a broker-dealer is involved in the development and maintenance of a stock index upon which products such as PDRs and Fund Shares are based. In that case, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that if a broker-dealer is involved in developing or maintaining a stock index, the index must be calculated by a third party who is not a broker-dealer. The Commission believes that such information barrier procedures will address the unauthorized transfer and misuse of material, non-public information.

The Commission further notes that PDRs and Fund Shares are not leveraged instruments and thus do not require any monitoring procedures in connection with leveraging.

F. Scope of the Commission's Order

The Commission is approving Nasdaq's proposed listing standards for PDRs and Fund Shares. The Commission specifically notes that, notwithstanding approval of the listing standards for PDRs and Fund Shares, other similarly structured instruments and products, including other ETFs, will require review by the Commission pursuant to Section 19(b) of the Act [37] prior to being traded on Nasdaq.

G. Accelerated Approval

The Commission finds good cause for partially approving the listing standards portion of the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the eligibility of PDRs and Fund Shares for listing and trading on Nasdaq will provide investors with increased investment choice, and that partial accelerated approval of the proposal relating to the listing and trading of PDRs and Fund Shares will allow investors to take advantage of such increased choice promptly. In addition, the Commission notes that it has previously approved the listing and trading of PDRs and Fund Shares.[38]

In Amendment No. 1 to the proposed rule change, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for PDRs and Fund Shares will be from 9:30 a.m. to 4 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees. In Amendment No. 2, Nasdaq removed the term ''member organization'' throughout its proposed rule text and proposal.

Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[39] for granting partial accelerated approval to the proposed rule change relating to listing standards for PDRs and Fund Shares, as amended.[40]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (SR–NASD–2002–45) relating to the listing and trading of PDRs and Fund Shares, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–12642 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–P

[35] At initiation, Nasdaq represents that trading in PDRs and Fund Shares will occur until 4 p.m. Nasdaq understands that most other markets that trade PDRs and Fund Shares extend their regular trading session until 4:15 p.m., and Nasdaq plans to extend its regular trading session until 4:15 p.m. as soon as technically feasible. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002.

[36] Trades after the end of the regular trading session will have a ''.T'' identifier, which will exclude them from the consolidated daily ''high,'' ''low,'' and ''close'' prices, but they would be included in the daily volume statistics. Telephone conversation between John D. Nachmann, Senior Attorney, Nasdaq, and Florence Harmon, Senior Special Counsel, Commission, on May 13, 2002. *See also* Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999); and 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002).

[37] 15 U.S.C. 78s(b)(2).

[38] *See supra* note 25.

[39] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[40] The proposed listing fees are not being approved, and are only being noticed for comment by the Commission for review under Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Impact Statement, Tier 1 for Federal Aviation Administration Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Noticeof availability.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Tier 1 Final Environmental Impact Statement (FEIS)—FAA Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport, has been prepared and is available for public viewing during normal business hours at the following locations listed below. No decision on the proposed action will be made or recorded until at least 30 days after notice of availability has been published in the **Federal Register** by the United States Environmental Protection Agency.

1. Chicago Airports District Office, Room 312, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.
Governors State University Library, Governors State University, University Park, Illinois 60466
2. Joliet Public Library, 150 North Ottawa Street, Joliet, Illinois 60432.
3. Northwestern University Library, 1935 Sheridan Road, Evanston, Illinois 60202
4. Harold Washington Public Library, 400 South State Street, Chicago, Illinois 60605
5. Kankakee Public Library, 304 South Indiana, Kankakee, Illinois 60901
6. Matteson Public Library, 801 South School Avenue, Matteson, Illinois 60443
7. Crete Public Library, 1177 North Main Street, Crete, Illinois 60417
8. Indiana University Northwest Library, 3400 Broadway, Gary, Indiana 46408
9.Purdue University, Calumet Campus Library, 2200 169th Street, Hammond, Indiana 46323
10. Village of Manteno, Village Hall, 269 North Main Street, Manteno, Illinois 60950
11. Village of Monee, Village Hall, 5130 West Court Street, Monee, Illinois 60449
12. Village of Beecher, Village Hall, 724 Penfield, Beecher, Illinois 60401
13. Village of Peotone, Village Hall, 208 East Main Street, Peotone, Illinois 60468
14. College of DuPage, Learning Resources Center (Library), 425 Second Street, Glen Ellyn, Illinois 60137
15. Illinois Department of Transportation, 310 South Michigan Avenue, Chicago, Illinois 60604
16. Illinois Department of Transportation, Illinois Division of Aeronautics, One Langhorne Bond Drive/Capital Airport, Springfield, Illinois 62707
17. Illinois Department of Transportation, South Suburban Airport Program Office, 4749 Lincoln Mall Drive, Suite 501, Matteson, Illinois 60443

FOR FURTHER INFORMATION, CONTACT: Denis R. Rewerts, Capacity Officer, Federal Aviation Administration, Chicago Airports District Office, Room 312, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Rewerts can be contacted at (847)294–7195 (voice), (847) 294–7046 (facsimile) or by e-mail at *7–AGL–SSA–EIS–PROJECT@faa.gov.*

Issued in Des Plaines, Illinois on May 7, 2002.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–12613 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Stand-Alone Airborne Navigation Equipment Using the Global Positioning System (GPS) Augmented by the Wide Area Augmention System (WAAS)

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a revised draft Technical Standard Order (TSO) C–146a, Stand Alone Airborne Navigation Equipment Using the GPS Augmented by the WAAS. The draft TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their stand-alone airborne navigation equipment, using GPS augmented by the WAAS must meet to obtain approval and be identified with the applicable TSO marking.

DATES: Comments submitted must be received on or before July 19, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or Deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9897, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to comment on the draft TSO listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked ''Comments to TSO C–146a.'' Comments received on the draft Technical Standard Order may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communication received on or before the closing date for comment specified will be considered by the Director of the Aircraft Certification service before issuing the final TSO.

How To Obtain Copies

A copy of the revised draft TSO may be obtained via Internet (*http://www.faa.gov/avr/air/airhome.htm*) or on request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 15, 2002.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–12610 Filed 5–17–02; 8:45 am]

BILLING CODE 4710–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Hold Scoping Meetings for Washington Dulles International Airport (IAD), Chantilly, VA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and hold two (2) public scoping meetings and one (1) Governmental and Public Agency scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for development of proposed new runways, terminal facilities, and related facilities at Washington Dulles International Airport, Chantilly, Virginia. To ensure that all significant issues related to the proposed action are identified, two (2) public scoping meetings and one (1) governmental and public agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Frank Smigelski, Environmental Specialist, Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166, Phone (703) 661–1365, Fax: (703) 661–1370, e-mail *Frank.Smigelski@FAA.GOV.* Comments on the scope of the EIS should be submitted to the address above and must be received no later than Friday, July 12, 2002.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare an Environmental Impact Statement for development of proposed new runways, terminal facilities, and related facilities at Washington Dulles International Airport (IAD), located 26 miles west of Washington, DC in Fairfax and Loudoun Counties in Chantilly, Virginia. The EIS is being prepared in accordance with FAA Order 5050.4A, Airport Environmental Handbook, implementing the National Environmental Policy Act. IAD is a commercial service airport located within a metropolitan area and served 18 million passengers in 2001 with approximately 400,000 aircraft operations. IAD currently has three runways. Two additional runways are proposed.

The alternatives to be evaluated in the EIS include, but will not necessarily be limited to, the No-Action Alternative; the Proposed Action Alternative; and runway separation variation alternatives. Comments and suggestions are invited from Federal, state, and local agencies, and other interested parties to ensure that the full range of actions, alternatives and impacts related to the proposed development are considered and that all significant issues are identified. Written comments and suggestions concerning the scope of the EIS may be mailed to the FAA informational contact listed above and must be received no later than Friday, July 12, 2002.

Public Scoping Meetings: The FAA will hold two (2) public and one (1) governmental agency scoping meetings to solicit input from the public and various Federal, state, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed project. The public scoping meetings will be held Wednesday, June 26, 2002, in Fairfax County at Westfield High School, 4700 Stonecroft Blvd. Chantilly, VA and Thursday, June 27, 2002, in Loudoun County at Farmwell Station Middle School, 44281 Gloucester Pkwy, Ashburn, VA. The public meetings will be held from 5 p.m. to 8 p.m. An agency scoping meeting will be held specifically for governmental agencies on Wednesday, June 26, 2002, at the Washington Dulles Marriott, 45020 Aviation Drive, Sterling, VA. The agency meeting will be held from 1 p.m. to 3 p.m. Please confirm the meeting location and date with the FAA informational contact listed above close to the meeting date.

Issued in Chantilly, Virginia on Monday, May 13, 2002.

Terry J. Page,

Manager, Washington Airports District Office, FAA, Eastern Region.

[FR Doc. 02–12611 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–01–C–00–COU To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Columbia Regional Airport, Columbia, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Columbia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William E. Boston, III, Airport Manager, Columbia Regional Airport, at the following address: City of Columbia, Missouri, 701 E. Broadway, Columbia, Missouri 65201.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Columbia, Columbia Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Columbia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990) (Title IX of the Omnibus Budget Reconciliation Act of 1990), (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 10, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Columbia, Missouri, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 13, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October, 2002.

Proposed charge expiration date: September, 2012.

Total estimated PFC revenue: $2,363,932.

Brief description of proposed project(s): Acquisition of Rapid Intervention Vehicle/Fire Truck; Phases I and II Resurfacing General Aviation Apron, Purchase Snowblower, and Renovation of Access Road and Ramp Lighting; Overlay Runway 13/31, Replace Fence, and Relocate Access Gate 5; Overlay Access Road and terminal loop, Construct Snow Removal Equipment Building Addition, Construct Taxiway C and Apron Underdrain; Add Computer Controlled Access Gates, Install Standby Electrical

Generator; Extend Apron, Retain Consultant for Terminal Renovation, Aircraft Rescue Fire Fighting Facility Relocation, and Americans with Disabilities Act Updates to Terminal; Phase II of Air Carrier Apron Extension, Replace Front End Loader; Design Taxiway A Connecting Taxiway, Modify Gate 9 for Automated Operation, Construct Portion of Ramp and Taxiway Connector; Rehabilitation of North Cargo Apron; Master Plan Update; Reconstruct Portion of Runway 2/20, Upgrade Runway 2/20 North Safety Area and Relocate Omni-Directional Approach Lighting System and Instrument Landing System Localizer Building, Replace Underground Lighting Control Cables and Control Units; Construction of Phase II Portion of Apron Expansion and Connecting Taxiway between the Apron and Parallel Taxiway; Acquisition of Land; Preliminary Terminal Study; Environmental Assessment; Replacement of Snow Plow/Spreader Truck; Cargo Apron South Addition with Connecting Taxiway; Upgrade Runway 13/31; and Preliminary Terminal Upgrade Design.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbia Regional Airport. Issued in Kansas City, Missouri on May 10, 2002.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 02–12612 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–DCA to Impose Revenue from a Passenger Facility Charge at Ronald Reagan Washington National Airport, Arlington, Virginia and for Use at Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose revenue from a Passenger Facility Charge (PFC) at Ronald Reagan Washington National Airport for use at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Brian Duffy, Manager, Fiscal Programs of the Metropolitan Washington Airports Authority (MWAA) at the following address: 1 Aviation Circle, Washington, DC 20001–6000.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the MWAA under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, PFC Program Manager, Airports Division, 1 Aviation Plaza, Jamaica, New York 11434, (718) 553–3354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application impose the revenue from a PFC at Ronald Reagan Washington National Airport for use at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by MWAA was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–05–C–00–DCA.

Level of the proposed PFC: $4.50.

Proposed charge effective date: September 1, 2006.

Proposed charge expiration date: November 1, 2007.

Total estimated PFC revenue: $33,895.949.

Brief description of proposed project(s):

—Rehabilitation of Taxiway F

—Taxiway J Extension

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled, on demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the Washington Airport District Office: 23723 Air Freight Ln., Suite 210, Dulles, Virginia 20166.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on May, 2002.

Eleanor Schifflin,

PFC Program Manager, AEA–610, Eastern Region.

[FR Doc. 02–12615 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–IAD To Impose and Use the Revenue From a Passenger Facility Charge at Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Brian Duffy, Manager, Fiscal Programs of the Metropolitan Washington Airports Authority (MWAA) at the following

address: 1 Aviation Circle, Washington, DC 20001–6000.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the MWAA under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, PFC Program Manager, Airports Division, 1 Aviation Plaza, Jamaica, New York 11434, (718) 553–3354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.) 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by MWAA was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–IAD.

Level of the proposed PFC: $4.50.

Proposed charge effective date: December 1, 2006.

Proposed charge expiration date: August 1, 2008.

Total estimated PFC revenue: $59,102,550.

Brief description of proposed projects(s):

—Concourse B Expansion

—Wetland Mitigation Program

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the Washington Airport District Office: 23723 Air Freight Ln., Suite 210, Dulles, Virginia 20166.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Dated: Issued in Jamaica, New York on May, 2002.

Eleanor Schifflin,

PFC Program Manager, AEA–610, Eastern Region.

[FR Doc. 02–12614 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957]

Pipeline Safety Reports of Abandoned Underwater Pipelines

AGENCY: Research and Special Programs Administration.

ACTION: Notice and request for public comments.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing Research and Special Programs Administration's (RSPA) collection of information for Pipeline Safety Reports of Abandoned Underwater Pipelines. Specifically, public comment is requested on ways to minimize the burden of this collection of information on the public, along with other factors. RSPA intends to request OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320.

DATES: Comments on this notice must be received by July 19, 2002 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments in duplicate to the U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. To submit comments electronically, log on to the following Internet Web address *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. Comments can be reviewed at the dockets facility which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Comments must identify docket number of this notice. Persons should submit the original documents and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Please identify the docket and notice numbers shown in the heading of this notice. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Pipeline Safety Reports of Abandoned Underwater Pipelines

Type of Request: Renewal of existing information collection.

Abstract: Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their useful life. This trend is expected to continue. In 1992, Congress responded to this issue by amending the Pipeline Safety Act (49 U.S.C. 60108(c)(6)(B)) which directs the Secretary of Transportation to require operators of an offshore pipeline facility or a pipeline crossing navigable waters to report the abandonment to the Secretary of Transportation in a way that specifies whether the facility has been abandoned properly according to applicable Federal and State requirements. RSPA's regulations for abandonment reporting can be found at 49 CFR 192.727 and 195.402.

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,400 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. All comments will also be available to the public in the docket.

Issued in Washington, DC on May 14, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–12547 Filed 5–17–02; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Monday,
May 20, 2002

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229 and 249
Disclosure in Management's Discussion and Analysis About the Application of Critical Accounting Policies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8098; 34–45907; International Series Release No. 1258; File No. S7–16–02]

RIN 3235–AI44

Disclosure in Management's Discussion and Analysis About the Application of Critical Accounting Policies

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of proposed rulemaking.

SUMMARY: As an initial step in improving the transparency of companies' financial disclosure, the Commission is proposing disclosure requirements that would enhance investors' understanding of the application of companies' critical accounting policies. The proposals would encompass disclosure in two areas: accounting estimates a company makes in applying its accounting policies and the initial adoption by a company of an accounting policy that has a material impact on its financial presentation. Under the first part of the proposals, a company would have to identify the accounting estimates reflected in its financial statements that required it to make assumptions about matters that were highly uncertain at the time of estimation. Disclosure about those estimates would then be required if different estimates that the company reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the company's financial condition, changes in financial condition or results of operations. A company's disclosure about these critical accounting estimates would include a discussion of: the methodology and assumptions underlying them; the effect the accounting estimates have on the company's financial presentation; and the effect of changes in the estimates. Under the second part of the proposals, a company that has initially adopted an accounting policy with a material impact would have to disclose information that includes: what gave rise to the initial adoption; the impact of the adoption; the accounting principle adopted and method of applying it; and the choices it had among accounting principles. Companies would place all of the new disclosure in the ''Management's Discussion and Analysis of Financial Condition and Results of Operations' section (commonly referred to as ''MD&A'') of their annual reports, registration statements and proxy and information statements. In addition, in the MD&A section of their quarterly reports, U.S. companies would have to update the information regarding their critical accounting estimates to disclose material changes.

DATES: Comments should be received by July 19, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC, 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–16–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Anita Klein or Andrew Thorpe, Division of Corporation Finance (202–942–2980) or Jackson Day or Jenifer Minke-Girard, Office of the Chief Accountant (202–942–4400), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

We are proposing amendments to Item 303 [1] of Regulation S–K, [2] Item 303 [3] of Regulation S–B [4] and Item 5 of Form 20–F [5] under the Securities Exchange Act of 1934 [6] (''Exchange Act'').

Table of Contents

I. Executive Summary

One important challenge facing our capital markets today is the need to improve the quality and transparency of corporate disclosure. Our capital markets could reach a higher level of efficiency and investor confidence if companies were to provide higher-quality, more insightful financial information. To serve that purpose, we issued cautionary advice in December 2001 regarding MD&A disclosure. [7] In that release, we recognized the need for

[1] 17 CFR 229.303.

[2] 17 CFR 229.10 *et seq.*

[3] 17 CFR 228.303.

[4] 17 CFR 228.10 *et seq.*

[5] 17 CFR 249.308b.

[6] 15 U.S.C. § 78a *et seq.*

[7] *See* Securities Act Release No. 8040, FR–60 (Dec. 12, 2001) [66 FR 65013]. *See also* Securities Act Release No. 8056, FR–61 (Jan. 22, 2002)[67 FR 3746]. In addition, we recently announced our intention to propose other changes in disclosure rules to improve the financial reporting and disclosure system. *See* SEC Press Release No. 2002–22 (Feb. 13, 2002).

disclosure that allows investors to understand more completely the manner in which, and degree to which, a company's reported operating results, financial condition and changes in financial condition depend on estimates involved in applying accounting policies that entail uncertainties and subjectivity. We also asked companies to begin better addressing investors' need for this disclosure.

As contemplated in that release, we are now proposing to amend the MD&A requirements [8] to mandate improved disclosure in a new ''Application of Critical Accounting Policies'' section in companies' filed annual reports, annual reports to shareholders, registration statements and proxy and information statements. [9] The new section would encompass disclosure both about accounting estimates resulting from the application of critical accounting policies and the initial adoption of accounting policies that have a material impact on a company's financial presentation. The proposed disclosure requirements would apply to all companies except small business issuers that have not had revenues from operations during the last two fiscal years. The proposed MD&A disclosure requirements would cover the most recent fiscal year and any subsequent interim period for which financial statements are required to be presented.

To determine whether an accounting estimate [10] involved in applying the company's accounting policies would entail disclosure under the proposals, a company would have to answer two questions:

1. Did the accounting estimate require us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made?

2. Would different estimates that we reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, have a material impact on the presentation of our financial condition, changes in financial condition or results of operations?

If the answers to both questions are ''yes,'' the accounting estimate would be a ''critical accounting estimate,'' and disclosure would be required in the new ''Application of Critical Accounting Policies'' section.

The proposed disclosure about these accounting estimates would involve three basic elements.[11] The first element would be the basic disclosures needed to understand the accounting estimates. A company would have to describe them, identify where and how they affect the company's reported financial results, financial condition and changes in financial condition, and, where material, identify the affected line items. It would have to describe the methodology underlying each critical accounting estimate, the assumptions that are about highly uncertain matters and other assumptions that are material. If applicable, a company would have to discuss why it could have chosen in the current period estimates that would have had a materially different impact on the company's financial presentation. Similarly, a company would have to discuss, if applicable, why the accounting estimate is reasonably likely to change in future periods with a material impact on the company's financial presentation.[12]

A company would have to identify the segments [13] of its business that a critical accounting estimate affects. A company also would have to provide appropriate parts of the proposed disclosure for affected segments where a failure to present that information would result in an omission that renders the disclosure materially misleading.

The second element of the proposed disclosure about critical accounting estimates would give investors a better understanding of the sensitivity of the reported operating results and financial condition to changes in those estimates or their underlying assumption(s). For each critical accounting estimate, a company would discuss changes that would result either from: (i) Making reasonably possible, near-term changes in the most material assumption(s) underlying the estimate; or (ii) using in place of the recorded estimate the ends of the range of reasonably possible amounts which the company likely determined when formulating its recorded estimate. The company would describe the impact of those changes on the company's overall financial performance and, to the extent material, on the line items in the company's financial statements. In addition, the proposals would require a quantitative and qualitative discussion of management's history of changing its critical accounting estimates in recent years.

The third element of the proposed disclosure about critical accounting estimates would require a company to state whether or not senior management discussed the development, selection and disclosure of those estimates with the company's audit committee. This part of the proposals is designed to inform investors about whether there is oversight of critical accounting estimates by audit committee members and may incidentally encourage such oversight and increase reliability of the proposed MD&A disclosure about critical accounting estimates.

Our proposals also address MD&A disclosure regarding initial adoption of an accounting policy. If an accounting policy initially adopted by a company had a material impact on the company's financial presentation, the company would provide certain disclosures about that initial adoption unless it resulted solely from new accounting literature issued by a recognized accounting standard setter. The initial adoption of

[8] We propose to amend Item 303 of Regulation S–K, and the parallel provisions in Regulation S–B (which applies to small business issuers) and Form 20–F (which applies to foreign private issuers).

[9] The proposals would not alter which documents require presentation of an MD&A. MD&A disclosure is only required in proxy and information statements themselves if action is to be taken with respect to: (1) the modification of any class of securities of the registrant; (2) the issuance or authorization for issuance of securities of the registrant; or (3) mergers, consolidations, acquisitions and similar matters. *See* Items 11, 12 and 14 of Schedule 14A, 17 CFR 240.14a–101. Investors otherwise receive the MD&A disclosure in the annual report to shareholders that must accompany or precede any proxy or information statement relating to an annual meeting at which directors are to be elected. *See* 17 CFR 240.14a–3.

[10] An accounting estimate is an approximation made by management of a financial statement element, item or account in the financial statements. Accounting estimates in historical financial statements measure the effects of past business transactions or events, or the present status of an asset or liability. *See Codification of Statements on Auditing Standards* (including related Auditing Interpretations) (''AU'') § 342, *Auditing Accounting Estimates* (''AU § 342''), paragraphs 1–3. For purposes of the proposals, an accounting estimate would include one for which a change in the estimate is inseparable from the effect of a change in accounting principle. *See* Accounting Principles Board (''APB'') Opinion No. 20, *Accounting Changes* (July 1971) (''APB No. 20''), paragraph 11. *See also* proposed Item 303(b)(3)(ii)(A) of Regulation S–B, 17 CFR 228.303(b) (3)(ii)(A); proposed Item 303(c)(2)(i) of Regulation S–K, 17 CFR 229.303(c)(2)(i); and proposed Item 5.E.2.(a) of Form 20–F, 17 CFR 249.220f.

[11] In the MD&A section of quarterly reports, U.S. companies would have to update their critical accounting estimates disclosure to reflect material changes.

[12] The statutory and Commission rule safe harbors for forward-looking statements would be available to companies satisfying their terms and conditions in making forward-looking statements in connection with the proposed critical accounting estimates discussion. *See* Securities Act Section 27A, 15 U.S.C. 77z–2, Securities Act Rule 175, 17 CFR 230.175, Exchange Act Section 21E, 15 U.S.C. 78u–5, and Exchange Act Rule 3b–6, 17 CFR 240.3b–6.

[13] A segment for financial reporting purposes is defined by Financial Accounting Standards Board (''FASB'') Statement of Financial Accounting Standards (''SFAS'') No. 131, *Disclosures about Segments of an Enterprise and Related Information* (June 1997) (''SFAS No. 131'').

an accounting policy may occur in situations such as when events or transactions affecting the company occur for the first time, or were previously immaterial in their effect but become material, or events or transactions occur that are clearly different in substance from previous ones.

The proposed MD&A disclosure about the initial adoption of accounting policies seeks more qualitative information from companies about those types of situations. The disclosures we are proposing would include a description of:

- The events or transactions that gave rise to the initial adoption;
- The accounting principle adopted and the method of applying that principle; and
- The impact, discussed qualitatively, on the company's financial presentation.

In addition, if upon initial adoption the company had a choice between acceptable accounting principles under generally accepted accounting principles (GAAP), the company would disclose that it made a choice, explain the alternatives and state why it made the choice that it did. Further, if no accounting literature governed the accounting upon initial adoption, the company would have to explain which accounting principle and method of application it decided to use and how it made its decision.

All of the proposed MD&A disclosure regarding the application of critical accounting policies would have to be presented in language and a format that is clear, concise and understandable to the average investor. Boilerplate disclosures, or disclosures written in overly technical accounting terminology, would not satisfy the proposed requirements.

Our proposals do not attempt to address all circumstances where a company may exercise discretion in its accounting under GAAP. We focus our proposals on two areas involving the application of critical accounting policies in which there is a clear need for improved disclosure—critical accounting estimates and the initial adoption of accounting policies that have a material impact. As discussed below, disclosure in many other areas of accounting judgment is provided by existing MD&A requirements, materiality standards and financial statement disclosure requirements.

II. Background

A. Current MD&A Disclosure

For decades, the regulations governing disclosure in registration statements under the Securities Act of 1933 (''Securities Act'') and the Exchange Act, as well as annual and quarterly reports and proxy and information statements by public companies under the Exchange Act, have mandated MD&A disclosure.[14] MD&A disclosure should satisfy three related objectives:

1. To provide a narrative explanation of companies' financial statements that enables investors to see the company through the eyes of management;
2. To improve overall financial disclosure and provide the context within which financial statements should be analyzed; and
3. To provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.[15]

In MD&A, a company must discuss its results of operations, liquidity and capital resources and other information necessary to an understanding of the company's financial condition or changes in financial condition. A well-prepared MD&A discussion focuses on explaining a company's financial results and condition by identifying key elements of the business model and the drivers and dynamics of the business, and also addressing key variables. A company currently must disclose known trends, demands, commitments, events and uncertainties that are reasonably likely to occur and have material effects.[16]

In addition to these general subjects, a company must include in MD&A historical and prospective analysis of its financial statements, and identify the cause of material changes from prior periods in the line items of the financial statements where those changes are reflected. A company must analyze significant components of revenues or expenses needed to understand the results of operations. It also must discuss significant or unusual economic events or transactions that materially affected results of operations. Finally, a company also must discuss its ability to generate adequate amounts of cash to meet its short-term and long-term needs for capital and identify the anticipated sources of funds necessary to fulfill its commitments.

These requirements do not call for, and indeed we have discouraged and continue to discourage companies from providing, rote calculations of percentage changes in figures in the financial statements combined with boilerplate recitations of a surfeit of inadequately differentiated material and immaterial factors related to such changes. Rather, companies should emphasize material factors and their underlying reasons and preferably omit, or at least differentiate, immaterial information.

Recognizing the paramount importance of MD&A information to investors, in addition to today's proposal, we intend to continue to focus on improving disclosure in this area. In particular, we are considering MD&A proposals that will focus discussion on the three key objectives of MD&A noted above. We are considering a more explicit requirement for a summary of the MD&A section that would, in relatively short form, identify what management considers the most important factors in determining its financial results and condition, including the principal factors driving them, the principal trends on which management focuses and the principal risks to the business. We also are considering how to adjust the relative attention devoted in MD&A towards a more general discussion of material matters and away from a detailed description of business results that too often recites information that is otherwise available or is not material to investors.

In addition, we are continuing our consideration of subjects as to which we believe MD&A disclosure is particularly important, including the topics discussed in our January 22, 2002 release regarding MD&A.[17] For example, investors have become increasingly concerned about the sufficiency of disclosure regarding structured finance transactions, including those consummated using special purpose entities. A company's relationships with those types of entities may facilitate its transfer of, or access to, assets. Investors

[14] *See* Item 303 of Regulation S–K, 17 CFR 229.303, Item 303 of Regulation S–B, 17 CFR 228.303 and Item 5 of Form 20–F, referenced in 17 CFR 249.220f. Although the current MD&A disclosure requirements were adopted starting in 1980, earlier versions date back to 1968. *See* Securities Act Release Nos. 6231 (Sept. 2, 1980) [45 FR 63630] and 4936 (Dec. 9, 1968) [33 FR 18617]. *See also* Securities Act Release No. 5520 (Aug. 14, 1974) [39 FR 31894].

[15] *See* Securities Act Release No. 6711 (Apr. 23, 1987) [52 FR 13715], Section II.

[16] In assessing whether disclosure of a trend, event, etc. is required, management must consider both whether it is reasonably likely to occur and whether a material effect is reasonably likely to occur. As the Commission noted when it adopted the requirement, the ''reasonably likely to occur'' test is to be used rather than the *Basic* v. *Levinson* probability and magnitude test for materiality of contingent events. *See* Securities Act Release No. 6835 (May 18, 1989) [54 FR 22427] at fns. 27–28 and accompanying text.

[17] Securities Act Release No. 8056; FR–61 (Jan. 22, 2002) [67 FR 3746].

need to know more about the liquidity risk, market price risks and effects of ''off-balance sheet'' transaction structures and obligations. Another item of concern is a lack of transparent disclosure about transactions where that information appeared necessary to understand how significant aspects of the business were conducted. Investors would better understand financial statements in many circumstances if MD&A included descriptions of all material transactions involving related persons or entities, with a clear discussion of terms that differ from those which would likely be negotiated with clearly independent parties. Investors should understand these transactions' business purpose and economic substance, their effects on the financial statements, and any special risks or contingencies arising from them.

Finally, we are considering improvements to MD&A disclosures relating to trend information. We believe that investors may be better able to see the company through management's eyes if MD&A includes information about the trends that a company's management follows and evaluates in making decisions about how to guide the company's business. As with today's proposal, that disclosure would naturally entail a certain degree of forward-looking information.

B. Current Disclosure in Financial Statements about Accounting Estimates

Currently, GAAP and generally accepted auditing standards acknowledge that there are numerous circumstances in which companies, in applying accounting policies, exercise judgment and make estimates for purposes of the financial statements. For example, they call for companies to communicate in a number of circumstances about the use of estimates in the preparation of financial information. The use of estimates results in the presentation of many amounts that are in fact approximate rather than exact.[18] For example, APB No. 20 notes that ''changes in estimates used in accounting are necessary consequences of periodic presentation of financial statements'' because preparing financial statements requires estimating the effects of future events, and future events and their effects cannot be perceived with certainty.[19] Estimating the impact of those events therefore requires the exercise of judgment. Because the preparation of financial statements requires estimates that are likely to change over time, APB No. 20 requires disclosure about changes in estimates that are expected to affect several future reporting periods and that are not made each period in the ordinary course of accounting. It recommends disclosure if the effects of other changes in the estimate are material.[20]

In addition, AICPA Statement of Position No. 94–6 [21] requires general disclosure in notes to financial statements that the preparation of financial statements requires the use of estimates in the determination of the carrying amounts of assets or liabilities, including gain or loss contingencies.[22] That Statement also requires note disclosure regarding those specific estimates when known information indicates that it is at least reasonably possible [23] that the estimate will change in the near term and the effect would be material to the financial statements.[24] A company must disclose the nature of the uncertainty, in addition to stating that a change in the estimate in the near term is at least reasonably possible. SOP 94–6, encourages, but does not require, disclosure of the factors that cause an estimate to be susceptible to change from period to period.[25]

SOP 94–6 references SFAS No. 5, which itself requires certain disclosures about accounting estimates—specifically, estimated losses that arise from loss contingencies. A company is required to accrue (by a charge to income) an estimated loss from a loss contingency if certain criteria are met.[26] If an estimated loss does not meet the criteria for accrual, but there is at least a reasonable possibility that a loss may have been incurred, the company is required to disclose the nature of the contingency and an estimate of the possible loss or range of loss, or state that an estimate of the loss cannot be made. Although SFAS No. 5 elicits useful disclosure about certain accounting estimates, not all uncertainties inherent in the accounting process give rise to loss contingencies as that term is used in SFAS No. 5, and therefore that Statement does not apply to all estimates in the financial statements.[27]

Further, while not specifically requiring disclosure about estimates, APB Opinion No. 22 requires disclosure about the application of accounting policies which may entail generalized disclosure about estimation techniques.[28] APB No. 22 notes that a company's accounting principles, and their method of application, can affect significantly the presentation of its financial position, results of operations and cash flows,[29] and accordingly, requires disclosure that describes those accounting principles and the company's methods of applying them.[30] In particular, APB No. 22 indicates that a company should provide disclosure when:

- Unusual or innovative applications of accounting principles materially affect the determination of financial position, results of operations or cash flows (such as the recognition of revenue);

[18] *See* American Institute of Certified Public Accountants (''AICPA'') Statement of Position (''SOP'') No. 94–6, *Disclosure of Certain Significant Risks and Uncertainties* (Dec. 1994), (''SOP 94–6''), paragraph B–20; *See also* AU § 380, *Communication with Audit Committees* (''AU § 380'') and AU § 508, *Reports on Audited Financial Statements* (Apr. 1998).

[19] *See* APB No. 20, paragraph 10.

[20] *See* APB No. 20, paragraph 33.

[21] *See* SOP 94–6, particularly paragraphs 11–19.

[22] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975) (''SFAS No. 5''), paragraph 1, which defines a contingency as ''an existing condition, situation, or set of circumstances involving uncertainty as to possible gain * * * or loss * * * to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.''

[23] The term ''reasonably possible'' as used in SOP 94–6 is consistent with its use in SFAS No. 5. *See* SOP 94–6, fn. 7. SFAS No. 5 states that ''reasonably possible'' means the chance of a future transaction or event occurring is more than remote but less than likely. Reasonably possible events are less likely to occur than probable events.

[24] SOP 94–6, paragraph 17, notes: ''Whether the estimate meets the criteria for disclosure under this SOP does not depend on the amount that has been reported in the financial statements, but rather on the materiality of the effect that using a different estimate would have had on the financial statements. Simply because an estimate resulted in the recognition of a small financial statement amount, or no amount, does not mean that disclosure is not required under this SOP.''

[25] *See* SOP 94–6, paragraph 14.

[26] *See* SFAS No. 5, paragraph 8. An estimated loss should be accrued when *both* it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss can be reasonably estimated. Also, when it is probable that an asset has been impaired or a liability has been incurred and the reasonable estimate of the loss is a range, the company is required to accrue an amount for the loss. *See* FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss* (Sept. 1976), paragraph 3.

[27] *See* SFAS No.5, paragraph 2.

[28] *See* APB Opinion No. 22, *Disclosure of Accounting Policies* (Apr. 1972) (''APB No. 22'').

[29] *See* APB No. 22, paragraphs 6–7. APB No. 22 defines accounting policies of a reporting entity as ''the specific accounting principles and the methods of applying those principles that are judged by the management of the entity to be the most appropriate in the circumstances to present fairly financial position, results of operations, and cash flows in accordance with generally accepted accounting principles * * *.'' APB No. 22, paragraph 6, as amended.

[30] *See* APB No. 22, paragraph 12.

• A selection is made among alternative permissible policies; or

• Policies are unique to the industry of the reporting company.[31]

Under APB No. 22, a company's disclosure also should encompass important judgments as to appropriateness of principles relating to revenue recognition and allocation of asset costs to current and future periods. Although the particular format or location of these APB No. 22 disclosures in financial statements is not prescribed by GAAP, a summary of these significant accounting policies is customarily the first note to the financial statements.

Finally, some accounting standards currently prescribe specific disclosures about accounting estimates or the underlying methodologies and assumptions.[32] For example, Statement of Financial Accounting Standards No. 132 requires specific disclosures of the assumptions used in accounting for pensions and other post-retirement benefits.[33] Statement of Financial Accounting Standards No. 140 requires disclosure regarding the measurement of retained interests in securitized financial assets, including the methodology, assumptions and sensitivity of the assumptions used in determining their fair value.[34]

C. Current Disclosure in Financial Statements About Initial Adoption of Accounting Policies

Certain general requirements under GAAP may elicit information about the initial adoption of an accounting policy by a company. When companies present comparative financial statements, any exceptions to comparability between the most recent period and prior periods must be clearly presented.[35] In addition, if a company initially adopts an accounting policy and considers that policy to be a significant accounting policy, the company would provide certain disclosures about that policy as required by APB No. 22.[36]

APB No. 20 provides financial statement disclosure requirements for accounting changes, which include changes in an accounting principle, an accounting estimate and the reporting entity.[37] Neither ''(a) the initial adoption of an accounting principle in recognition of events or transactions occurring for the first time or that previously were immaterial in their effect nor (b) adoption or modification of an accounting principle necessitated by transactions or events that are clearly different in substance from those previously occurring'' are considered, however, to be ''accounting changes'' under GAAP.[38] As discussed below, our proposals about initial adoption of accounting policies address these circumstances that are not accounting changes under GAAP if they have a material impact on a company's financial presentation.

III. Proposed Rules

A. Objectives of the Current Proposals

Our proposals would promote greater investor understanding of a company's important accounting estimates that reflect significant management judgment and uncertainty, and of a company's initial adoption of accounting policies that may reflect such judgment and uncertainty. Our primary objectives are:

• To enhance investors' understanding of the existence of, and necessity for, estimation in a company's financial statements;

• To focus investors on the important estimates that are particularly difficult for management to determine and where management therefore exercises significant judgment;

• To give investors an understanding of the impact those estimates have on the presentation of a company's financial condition, changes in financial condition or results of operations;

• To give investors an appreciation for how sensitive those estimates are; and

• To give investors an understanding of new material accounting policies as they arise and affect a company's financial results.

Our aim is to increase the transparency of the application of those accounting policies where management is the most prone to use judgment, generally because objective data and methodologies do not exist for the estimates or management is given initial policy choices under GAAP. We believe that it is these accounting policies that are least understood by investors and that mandated disclosure regarding areas of the application of them would provide meaningful insight into the importance of estimates and adoption of policies to a company's financial presentation. With a greater understanding of the application of critical accounting policies, we believe that investors would be in a better position to assess the quality of, and potential variability of, a company's earnings.

We propose to mandate enhanced disclosure of critical accounting estimates and initial adoption of material policies by specifically linking them to the objectives of MD&A, and the type of disclosure presented in MD&A. A focused discussion of these areas is well-suited to MD&A because it would further explain to investors the company's financial condition ''through management's eyes.'' Moreover, MD&A's emphasis on disclosure of significant uncertainties and favorable or unfavorable trends naturally dovetails with disclosure of the more subjective aspects used in arriving at critical accounting estimates or selecting which accounting policies to adopt initially. Finally, as we have noted previously, the less technical language customarily used outside the financial statements may be conducive to a clearer explanation to investors of the effects of estimates, assumptions, methodologies and initial accounting policy adoption on a company's financial reporting.[39]

B. Scope of the Proposals

Our proposals address estimates that a company makes in preparing financial statements using accounting policies under GAAP and the initial adoption by a company of an accounting policy under GAAP that has a material impact on its financial presentation.[40] We believe the proposals address directly and clearly two areas where there is a need for improved disclosure. While certain elements of our proposed critical accounting estimates disclosure are subsumed in existing general MD&A requirements, we believe more direct

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[31] *Id.*

[32] In addition to the examples cited in the paragraph, see the disclosure requirements in FASB SFAS No. 107, *Disclosures about Fair Value of Financial Instruments* (Dec. 1991); FASB SFAS No. 123, *Accounting for Stock-Based Compensation* (Oct. 1995) (''SFAS No. 123''); and FASB SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (Aug. 2001) (''SFAS No. 144'').

[33] *See* FASB SFAS No. 132, *Employers' Disclosures about Pensions and Other Postretirement Benefits* (Feb. 1998).

[34] *See* FASB SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (a replacement of FASB Statement No. 125) (Sept. 2000).

[35] *See* Accounting Research Bulletin (ARB) No. 43, *Restatement and Revision of Accounting Research Bulletins* (June 1953), Chapter 2, ''Form of Statements,'' Section A, ''Comparative Financial Statements,'' paragraph 3, and paragraph 2 (''the well recognized principle that any change in practice which affects comparability should be disclosed'').

[36] *See* APB No. 22, paragraph 12.

[37] *See* APB No. 20, paragraph 6.

[38] *See* APB No. 20, paragraph 8.

[39] *See* Securities Act Release No. 7793 (Jan. 21, 2000) [65 FR 4585] (suggesting that additions to financial disclosure outside the financial statements could help address concerns relating to lack of transparency in some aspects of financial reporting within the financial statements).

[40] These could include estimates made on a one-time basis, on a few occasions, or on a recurring basis.

and complete requirements in our rules would lead to improved disclosure. In addition, while there are financial statement disclosure requirements that would elicit certain information about initially adopted accounting policies in some cases, our proposals are designed to provide additional MD&A disclosure that would assist investors to understand better a company's new accounting policies.

We are leaving disclosure about other circumstances where a company may exercise discretion over its accounting under GAAP to existing MD&A disclosure requirements, materiality standards and existing financial statement disclosure requirements. Our proposals do not, for example, alter disclosure requirements regarding a company's change from an accounting policy it has been using to another policy acceptable under GAAP.[41] The proposals also do not require disclosure of a company's adoption of a new accounting pronouncement where the company must make its best judgment as to how to apply the new accounting pronouncement in the absence of interpretive guidance.

Discipline surrounding a company's changes in accounting policies is provided under GAAP and the federal securities laws. When a company changes an accounting policy, the company must determine that the alternative principle is preferable under the circumstances.[42] We require that the company file a letter from its independent public accountant confirming its opinion to that effect.[43] In addition, a company is required to make certain disclosures in the financial statements about the accounting change, including the nature and justification for the change and its effect on income when the change is made.[44] In its justification for the change, the company is required to explain clearly why the newly adopted accounting principle is preferable.[45]

In addition to the existing disclosure requirements in the financial statements, scrutiny over management's discretion and judgment in applying accounting policies occurs on a number of different levels. Auditors are required to inform audit committees about management's ''initial selection of and changes in significant accounting policies or their application'' and about management's judgments and estimates.[46] We have encouraged companies, management, audit committees and auditors to consult with our accounting staff if they are uncertain about the application of GAAP.[47] We also have committed to provide assistance to companies in a timely fashion to address problems before they happen.

We recognize that the circumstances where a company may exercise discretion over its accounting policies under GAAP could yield significantly different financial results. Given the existing disclosure regime, we are not currently proposing additional MD&A disclosure to address all of these cases. Companies should provide complete, transparent disclosure under the applicable requirements. While we believe the proposed disclosure may be sufficient to achieve our currently stated objective, we may revisit the other circumstances where a company may exercise discretion over its accounting policies under GAAP at a later date.

We solicit comment with regard to broadening the scope of our proposals to achieve a more expansive objective.

- Should we require additional MD&A disclosure specifically regarding the effects of a change by a company from one accounting policy to another acceptable (and preferable) accounting policy under GAAP?
- Should we require in MD&A a discussion of the impact that alternative accounting policies acceptable under GAAP would have had on a company's financial statements even when a company did not choose to apply the alternatives?
- What costs would companies incur if they had to prepare disclosure about the effects of alternative accounting policies that could have been chosen but were not?
- Beyond a company's initial adoption of those policies, should we require disclosure in MD&A regarding a company's reasons for choosing, and the effects of applying, accounting policies used for unusual or innovative transactions or in emerging areas? Similarly, should we require companies to disclose in MD&A the effects of accounting policies that a company could have adopted, but did not adopt, for unusual or innovative transactions or in emerging areas?
- Should we require more disclosure by companies about their process of making estimates, or in other areas of discretion relating to recognition and measurement in financial statements? If so, please describe in detail.
- Should we require in MD&A a discussion of the impact of a company's choice among accounting methods under GAAP that are used in the company's industry (for example, the completed contract and the percentage of completion methods of accounting for construction-type contracts[48]) Should we require that type of disclosure only where a company uses a method under GAAP that is not generally used by other companies in the industry?

C. Proposed Disclosure About Critical Accounting Estimates

To inform investors of each critical accounting estimate and to place it in the context of the company's financial presentation, we would require the following information in the MD&A section:[49]

- A discussion that identifies and describes:
- The critical accounting estimate;
- The methodology used in determining the critical accounting estimate;
- Any underlying assumption that is about highly uncertain matters and any other underlying assumption that is material;
- Any known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the methodology or the assumptions described;

[41] When a company has selected an accounting policy from acceptable alternatives, it is required under GAAP to make certain disclosures about that accounting policy. *See* APB No. 22, paragraph 12. *See supra* fns. 28–31 and accompanying text.

U.S. GAAP provides only a limited number of situations in which more than one method of accounting would be considered acceptable. Over the years, the combined efforts of accounting standard setters, the accounting profession, public and non-public companies, and regulatory agencies have significantly reduced the number of acceptable alternatives in U.S. GAAP. *See* APB No. 22, paragraph 5. Areas remaining in U.S. GAAP in which there are acceptable alternatives include inventory pricing and depreciation methods. *See* APB No. 20, paragraph 9. *See also* SFAS No. 123 (providing a choice of accounting methods for an employee stock option or similar equity instrument).

[42] *See* APB No. 20, paragraph 16.

[43] *See* Accounting Series Release No. 177 (Sept. 10, 1975) [40 FR 46107], as codified in the Codification of Financial Reporting Policies § 304.02, *Preferability Letters,* Fed. Sec. L. Rep. (CCH) ¶ 73,096. *See also* Item 601(b)(18) of Regulations S–K and S–B, 17 CFR 229.601(b)(18) and 17 CFR 228.601(b)(18). A preferability letter generally is not required when a company adopts a new accounting policy as a result of implementing a new accounting pronouncement or rule issued by the FASB, AICPA or SEC.

[44] *See* APB No. 20, paragraphs 17–30.

[45] *Id.*

[46] *See* AU § 380, paragraphs 7 and 8.

[47] *See, e.g.,* Securities Act Release No. 8040, FR–60 (Dec. 12, 2001) [66 FR 65013].

[48] *See* SOP No. 81–1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts* (July 1981).

[49] In addition to the information specifically required, a company would be required to provide any other information necessary to keep its disclosure from being materially misleading. *See* Securities Act Rule 408, 17 CFR 230.408, and Exchange Act Rule 12b–20, 17 CFR 240.12b–20.

• If applicable, why different estimates that would have had a material impact on the company's financial presentation could have been used in the current period; and

• If applicable, why the accounting estimate is reasonably likely to change from period to period with a material impact on the financial presentation;

• An explanation of the significance of the accounting estimate to the company's financial condition, changes in financial condition and results of operations and, where material, an identification of the line items in the company's financial statements affected by the accounting estimate;

• A quantitative discussion of changes in overall financial performance and, to the extent material, line items in the financial statements if the company were to assume that the accounting estimate were changed, either by using reasonably possible near-term changes in the most material assumption(s) underlying the accounting estimate or by using the reasonably possible range of the accounting estimate; [50]

• A quantitative and qualitative discussion of any material changes made to the accounting estimate in the past three years, the reasons for the changes, and the effect on line items in the financial statements and overall financial performance;[51]

• A statement of whether or not the company's senior management has discussed the development and selection of the accounting estimate, and the MD&A disclosure regarding it, with the audit committee of the company's board of directors;

• If the company operates in more than one segment, an identification of the segments of the company's business the accounting estimate affects; and

• A discussion of the accounting estimate on a segment basis, to the extent that a failure to present that information would result in an omission that renders the disclosure materially misleading.

Unless otherwise stated, the discussion would cover the financial statements for the most recent fiscal year and any subsequent period for which interim period financial statements are required to be included.[52]

[50] If those changes could have a material effect on the company's liquidity or capital resources, then the company also would have to explain that effect.

[51] As described below, we would phase in the three-year period and use two years for small business issuers.

[52] The proposed rules would apply equally to business development companies. Business development companies are defined in Section 2(a)(48) of the Investment Company Act of 1940. *See* 15 USC § 80a–2(a)(48). Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act, but file Forms 10–K and 10–Q, and also include MD&A in their annual reports to shareholders.

1. Accounting estimates covered under the proposals

A number of circumstances can require a company to make accounting estimates. For example, a company typically will estimate the net realizable value of its accounts receivable and of its inventory.[53] Not all accounting estimates in a company's financial statements, however, will necessarily be critical accounting estimates to which the proposed disclosure relates. An accounting estimate would be a critical accounting estimate for purposes of the proposed disclosure only if it meets two criteria. First, the accounting estimate must require a company to make assumptions about matters that are highly uncertain at the time the accounting estimate is made. Second, it must be the case that different estimates that the company reasonably could have used for the accounting estimate in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the company's financial condition, changes in financial condition or results of operations.[54]

For purposes of the first criterion, a matter involves a high degree of uncertainty if it is dependent on events remote in time that may or may not occur, or it is not capable of being readily calculated from generally accepted methodologies or derived with some degree of precision from available data. Accordingly, a matter that is highly uncertain requires management to use significant judgment in making assumptions about that matter. The application of management's judgment in those circumstances typically results in management developing a range within which it believes the accounting estimate should fall.

The second criterion focuses the proposals further on two types of accounting estimates involved in the application of accounting policies. First, it includes accounting estimates for which a company in the current period could reasonably have recorded in the financial statements an amount sufficiently different such that it would have had a material impact on the company's financial presentation. Second, it includes any accounting estimate that is reasonably likely to change from period to period to the extent that the change would have a material impact on the company's financial presentation. Thus, whether management's judgment has an impact primarily in the current period or on an ongoing basis (or both), the estimate would qualify.

Under the proposals, a company would discuss any accounting estimate that it determines to be critical. We believe that few of a company's accounting estimates generally would meet those thresholds. We do not currently propose an outside limit to the number of accounting estimates that a company must discuss under the proposals. As the term ''critical accounting estimate'' implies, however, the disclosure should not encompass a long list of accounting estimates resulting from the application of accounting policies which cover a substantial number of line items in the company's financial statements.[55] While the number of critical accounting estimates will vary by company, we would expect a very few companies to have none at all and the vast majority of companies to have somewhere in the range of three to five critical accounting estimates. The number could be at the high end of the range, or be slightly higher, for companies that conclude that one or more critical accounting estimates must be identified and discussed primarily because of particular segments. Investors, however, will not benefit from a lengthy discussion of a multitude of accounting estimates in which the truly critical ones are obscured. If we adopt the proposals without a maximum number, we may monitor disclosure to determine whether disclosure would be improved if a maximum number were set.

We seek comment on the proposed definition of critical accounting estimates.

• Is the definition appropriately tailored?

[53] Other examples of accounting estimates include: property and casualty insurance loss reserves, current obligations that will be fulfilled over several years, future returns of products sold, the amount of cash flows expected to be generated by a specific group of assets, revenues from contracts accounted for by the percentage of completion method and pension and warranty expenses. *See* AU § 342, paragraph 2. For a more detailed list, *see* the Appendix to AU § 342.

[54] ''Critical accounting estimate'' is defined in proposed Item 303(b)(3)(ii)(B) of Regulation S–B, 17 CFR 228.303(b)(3)(ii)(B); proposed Item 303(c)(2)(ii) of Regulation S–K, 17 CFR 229.303(c)(2)(ii); and proposed Item 5.E.2.(b) of Form 20–F, 17 CFR 249.220f.

[55] *See* proposed Instruction 3 to paragraph (b)(3) of Item 303 of Regulation S–B, 17 CFR 228.303(b)(3); proposed Instruction 4 to paragraph (c) of Item 303 of Regulation S–K, 17 CFR 229.303(c); and proposed Instruction 3 to Item 5.E of Form 20–F, 17 CFR 249.220f.

• Does the definition capture the appropriate type and scope of accounting estimates?
• Is the definition appropriately designed to identify the accounting estimates that require management to use significant judgment or that are the most uncertain? If not, what other aspects descriptive of that type of estimate should be included?
• Is the definition appropriately designed to identify the accounting estimates involving a high potential to result in a material impact on the company's financial presentation?
• Would it be difficult for a company to discern which of its accounting estimates require assumptions about highly uncertain matters? If so, how could the proposal better target them?
• Should we consider setting a minimum percentage impact on results of operations in the second criterion of the definition, or would that be unnecessary because the proposed definition would not capture changes that have an insignificant impact?
• How many accounting estimates would a company typically identify as critical accounting estimates under the proposed definition?
• Would a company with multiple segments have a greater number of critical accounting estimates than a company without multiple segments? If so, please provide an explanation.
• Should we establish a maximum number of accounting estimates that may be discussed as critical accounting estimates (*e.g.,* seven)? If so, what should the maximum number be and what criteria should be applied to set the number so as to strike the appropriate balance between information truly useful to investors and overly extensive disclosure of marginal use? If a maximum were set, should the number of segments a company has be considered?
• Should we expand the definition to include MD&A disclosure of volatile accounting estimates that use complex methodologies but do not involve significant management judgment? Should we do so only when the underlying assumptions or methodologies of those estimates are not commonly used and therefore not understood by investors?

2. Identification and Description of the Accounting Estimate, the Methodology Used, Certain Assumptions and Reasonably Likely Changes

A company first would have to identify and describe each critical accounting estimate in such a way that it gives the appropriate context for investors reading that section and reflects management's view of the importance of the critical accounting estimate.[56] A company would have to disclose the methodology it used in determining the estimate. It also would have to disclose the assumptions underlying the accounting estimate that reflect matters highly uncertain at the time the estimate was made as well as other assumptions underlying the estimate that are material. We recognize that a critical accounting estimate may involve multiple assumptions. The proposed disclosure would focus in the first instance on those that are about highly uncertain matters because they have the greatest potential to make the accounting estimate highly susceptible to change.

If applicable, the company would have to describe why different estimates could have been used in the current period and why the accounting estimate is reasonably likely to change from period to period in the financial statements. For example, a critical accounting estimate related to a significant portfolio of over-the-counter derivative contracts may require that a company estimate the fair value of such contracts using a model or other valuation method. In that case, the company would disclose the methods it employs to estimate fair value, *e.g.,* the types of valuation models used such as the present value of estimated future cash flows, and assumptions such as an estimated price in the absence of a quoted market price.[57]

A company also would have to explain known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the assumptions made or the methodology used. Like the requirements elsewhere in MD&A, disclosure would be required if the trend, demand, commitment, event or uncertainty is currently known, it is reasonably likely to occur and it is reasonably likely to have a material impact. Disclosure would not be required if management could affirmatively conclude that the trend, demand, commitment, event or uncertainty is not reasonably likely to come to fruition or that a material effect is not reasonably likely to occur.[58]

3. Impact of the Estimate on Financial Condition, Changes in Financial Condition and Results of Operations

For each critical accounting estimate, a company would have to explain its significance to the company's financial condition, changes in financial condition and results of operations and, where material, identify its effect on the line items in the company's financial statements.[59] Because not all estimates themselves are line items in the financial statements,[60] their existence and their effect may not be readily apparent. Thus, this disclosure would provide additional information and clarity for investors.

4. Quantitative Disclosures

There are two areas of the proposed MD&A disclosure relating to critical accounting estimates in which we explicitly would require a presentation of quantitative information.[61] First, the proposals would require disclosure that demonstrates the sensitivity of financial results to changes made in connection with each critical accounting estimate. Second, the proposals would require quantitative disclosure relating to historical changes in a company's critical accounting estimates in the past three years.

a. Quantitative Disclosures To Demonstrate Sensitivity

We propose to require that a company present quantitative information about changes in its overall financial performance and, to the extent material, line items in the financial statements that would result if certain changes relating to a critical accounting estimate were assumed to occur. The company would identify the change being assumed and discuss quantitatively its impact on the company. Because the point of the disclosure is to demonstrate the degree of sensitivity, the impact on overall financial performance would be discussed regardless of how large that is.

As proposed, a company would have two possible choices of changes it would assume for purposes of the sensitivity analysis. First, the company

[56] *See* proposed Item 303(b)(3)(iii)(A) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(A); proposed Item 303(c)(3)(i) of Regulation S–K, 17 CFR 229.303(c)(3)(i); and proposed Item 5.E.3.(a) of Form 20–F, 17 CFR 249.220f.

[57] *See also* Securities Act Release No. 8056, FR–61 (Jan. 22, 2002) [67 FR 3746], Section II.B. (providing an example of a critical accounting estimate related to non-exchange traded contracts accounted for at fair value).

[58] *See supra* fn. 16.

[59] *See* proposed Item 303(b)(3)(iii)(B) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(B); proposed Item 303(c)(3)(ii) of Regulation S–K, 17 CFR 229.303(c)(3)(ii); and proposed Item 5.E.3.(b) of Form 20–F, 17 CFR 249.220f.

[60] For example, an estimate of fair value used to measure an impairment loss on a long-lived asset may not itself appear as a line item in the financial statements.

[61] *See* proposed Item 303(b)(3)(iii)(C) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(C); proposed Item 303(c)(3)(iii) of Regulation S–K, 17 CFR 229.303(c)(3)(iii); and proposed Item 5.E.3.(c) of Form 20–F, 17 CFR 249.220f.

could choose to assume that it changed the most material assumption or assumptions underlying the critical accounting estimate and discuss the results of those changes. Second, the company could choose to assume that the critical accounting estimate itself changes. In addition to providing two choices of methods to demonstrate sensitivity, we allow a company to determine the amount of the change that it assumes for this analysis rather than attempting to standardize those amounts. Under the first choice, a company could select the alternative material assumption or assumptions to use as long as the alternative represents a change that is reasonably possible in the near term. ''Reasonably possible'' means the chance of a future transaction or event occurring is more than remote but less than likely.[62] ''Near-term'' means a period of time going forward up to one year from the date of the financial statements.[63] Under the second choice, the company would use the upper and the lower ends of the range of reasonably possible estimates which it likely determined in formulating its recorded critical accounting estimate. It would substitute the upper end of the range for the recorded estimate and discuss the results. It would do the same for the lower end of the range.

We believe the most informative disclosure about sensitivity would result if we allow companies significant flexibility to customize these analyses. Our approach would accommodate different types of companies, different critical accounting estimates and different types of underlying assumptions. The parameters selected for the sensitivity analysis must, however, be realistic and meaningful measures of change.[64] For purposes of the sensitivity analysis, a company should disclose, if known or available, the likelihood of occurrence of the changes it selects, such as estimated probabilities of occurrence or standard deviations where applicable.

Under the first choice for demonstrating sensitivity, we would provide that a company choose its most material assumption underlying the critical accounting estimate and alter it at least twice [65] to reflect reasonably possible, near-term changes.[66] A company would have to complete the analysis assuming a positive change in the assumption. It would also have to complete the analysis assuming a negative change. In some cases, a company may not be able to select a single most material assumption to use for purposes of these analyses, or it may believe that using a single assumption would not provide meaningful sensitivity information for investors. If that were to occur, a company either could select the second choice for analyzing sensitivity (*i.e.,* using the ends of the range) or it could demonstrate the effects of near-term reasonably possible changes in more than one material assumption underlying the critical accounting estimate. If the company chooses the latter course of action, it also would have to disclose clearly the separate effect of each changed assumption.

In general, we believe the impact of a positive change and the impact of a negative change would both have to be disclosed where a company is assuming changes in its most material assumption (or assumptions). There may be cases, however, where both types of changes would not be applicable. In some instances, an increase in an assumption, but not a decrease in an assumption, or vice versa, would have no effect on the line items or the overall financial performance and therefore would not have to be discussed other than noting that fact.[67] It is conceivable that in other cases either a decrease or an increase would not be reasonably possible and therefore would not have to be discussed other than noting that fact.

With the proposed analysis, a company would demonstrate sensitivity of reported results to changes that affect its critical accounting estimates. Investors would have a better understanding of the extent to which there is a correlation between management's key assumptions and the company's overall financial performance. Investors also would understand better which particular line items in reported results would be materially affected and how much. In addition, a company would be required to state whether those assumed changes could have a material effect on the company's liquidity or capital resources. If they could have such an effect, the company would have to explain how, as a company currently is required to explain in MD&A when factors affecting liquidity or capital resources are present.[68]

From the proposed disclosure, the average investor should be able to ascertain the general degree to which the company's results of operations, liquidity and capital resources are susceptible to changes in management's views relating to critical accounting estimates. Along with the other provisions in the proposal, this quantitative and qualitative disclosure conveys information about the impact of management's subjective assumptions on current and future financial results.

We request comment on the proposed identification and analysis of changes.

- Are there some types of critical accounting estimates or some circumstances where the proposed disclosure relating to sensitivity would not be meaningful or otherwise helpful to investors? If so, which estimates or what circumstances?
- In addition to the two choices we propose for assuming changes relating to the critical accounting estimates to analyze sensitivity, are there others that we should permit? Should we require instead that all companies use the same method? If so, which one?
- Should we require a company to use whichever of the two proposed choices demonstrates the greatest impact on the company's financial presentation?
- Are there circumstances under which a company should be required to demonstrate sensitivity using both of the proposed choices?
- Are there any critical accounting estimates for which neither of the two

[62] ''Reasonably possible'' would have the same meaning as defined in SFAS No. 5. *See supra* fn. 23. *See also* proposed Item 303(b)(3)(ii)(D) of Regulation S–B, 17 CFR 228.303(b)(3)(ii)(D); proposed Item 303(c)(2)(iv) of Regulation S–K, 17 CFR 229.303(c)(2)(iv); and proposed Item 5.E.2.(d) of Form 20–F, 17 CFR 249.220f.

[63] ''Near-term'' would have the same meaning as defined in SOP 94–6 at paragraph 7. *See* proposed Item 303(b)(3)(ii)(C) of Regulation S–B, 17 CFR 228.303(b)(3)(ii)(C); proposed Item 303(c)(2)(iii) of Regulation S–K, 17 CFR 229.303(c)(2)(iii); and proposed Item 5.E.2.(c) of Form 20–F, 17 CFR 249.220f.

[64] For example, companies would be required to select meaningful changes in material assumptions and not ones so minute as to avoid, or materially understate, any demonstration for investors of sensitivity. *See* proposed Instruction 1 to paragraph (b)(3) of Item 303 of Regulation S–B, 17 CFR 228.303(b)(3); proposed Instruction 1 to paragraph (c) of Item 303 of Regulation S–K, 17 CFR 229.303(c); and proposed Instruction 1 to Item 5.E of Form 20–F, 17 CFR 249.220f.

[65] Where use of only one positive change, or use of only one negative change, would render the analysis materially misleading, companies would have to include more than one assumed positive change, or more than one assumed negative change, to avoid that result.

[66] In completing the analysis, companies would have to consider whether assumed events that alter the most material assumption also could have some impact on other assumptions made in formulating the critical accounting estimate. For example, if a company were to assume a reasonably possible near-term change in fuel prices occurred, that change may impact multiple assumptions underlying a critical accounting estimate that each take fuel prices into account. Companies would have to determine whether and how their other assumptions would change and disclose the aggregate effect of all of those changes.

[67] For an example of when this could take place, *see infra* Example 3 in Section III.D.

[68] *See, e.g.,* Item 303(a)(1)–(2) of Regulation S–K, 17 CFR 229.303(a)(1)–(2).

choices for selecting the assumed changes would be appropriate?

• Will companies be able to select appropriate changes in their most material assumption or assumptions, or should we provide further guidance?

• To enhance an investors' ability to compare the sensitivity of various companies' financial statements to changes relating to a particular type of accounting estimate, should we standardize the changes that companies must assume for various types of estimates? If so, what should they be and why? For example, should we set a specified percentage increase and decrease to assume (*e.g.,* a 10% increase and decrease), or a presumptive increase and decrease, provided that degree of change is reasonably possible in the near term?

• Conversely, would any changes we standardize not be equally meaningful to measure sensitivity, or equally probable, for various accounting estimates, industries and companies, and thus reduce the value of any disclosure about sensitivity?

b. Quantitative and Qualitative Disclosures Concerning Past Changes in the Estimate

We recognize that a company will change its accounting estimates over time as new events occur or as management acquires more experience or additional information. Existing MD&A disclosure rules would call for discussion of the effects of changes in accounting estimates where those changes are material to an investor's understanding of financial position or results of operations. For example, MD&A currently requires companies to disclose:

• Information necessary for an understanding of financial condition, changes in financial condition and results of operations;[69]

• Significant components of revenues or expenses that should, in the company's judgment, be described in order to understand results of operations;[70]

• A material change in the relationship between costs and revenues resulting from a known event;[71]

• Matters that will have an impact on future operations and have not had an impact in the past;[72] and

• Matters that have had an impact on reported operations and are not expected to have an impact upon future operations.[73]

Notwithstanding the existing MD&A disclosure requirements, we believe it would be appropriate to require specific disclosure regarding past changes in critical accounting estimates. This type of information required under the proposal would give investors a clear understanding of a company's recent history of those changes. A company other than a small business issuer would have to include the proposed quantitative and qualitative discussion of any material changes in those accounting estimates under the proposals during the past three fiscal years.[74] A small business issuer would discuss material changes in its critical accounting estimates during the past two years.[75] Companies would have to identify how the material changes affected measurements in the financial statements and their overall financial performance.[76] This would enable investors to evaluate management's formulation of critical accounting estimates over time.

Companies also would be required to describe the reasons for those changes. If no material changes in the critical accounting estimates were made in the prescribed time period, or if a company did not make that estimate during any part of that period, a company would only be required to disclose that fact.

Although the period covered for the proposed disclosure of past changes in critical accounting estimates would be two years for small business issuers and three years for other companies, our proposed requirement relating to past changes would be put into effect in stages. Thus, when a small business issuer or other company files its first covered report, registration statement or proxy or information statement following adoption of the proposed rules, the rules would require it to provide the proposed specific past changes disclosure only for the past one or two years respectively. For example, if the first report were an annual report on Form 10–K for the fiscal year ended December 31, 2002, the company would include that information in the ''Application of Critical Accounting Policies'' section of MD&A about changes in 2001 and 2002 (and a small business issuer would include it only for 2002). In the first annual report, registration statement or proxy or information statement filed by a company more than one year following the effective date of the rules, it would have to provide that information for the past three years (two years for a small business issuer).[77]

We solicit comment on the proposed disclosure of past material changes in critical accounting estimates.

• Is sufficient disclosure of these changes already required under current MD&A requirements?

• Is a three-year period the most appropriate period of time over which investors should consider changes? If not, why would a shorter or longer period be more appropriate?

• Would requiring disclosure over a longer period, such as five years, make it easier for investors to identify trends? If so, over how many years should we phase in a longer period requirement?

• Should we mandate a standardized format for quantitative disclosure about past changes in critical accounting estimates (*e.g.,* a chart illustrating the dollar value of the change from the prior year for each year showing the impacted line items and other effects in each year)?

5. Senior Management's Discussions with the Audit Committee

Independent auditors discuss accounting estimates with management in order to conduct an audit, and the auditors may discuss them with the audit committee. In 1999, following the recommendations in the Report of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, we adopted a rule that would require an audit committee report in proxy or information statements connected to board of

[69] *See, e.g.,* Item 303(a) of Regulation S–K, 17 CFR 229.303(a).

[70] *See, e.g.,* Item 303(a)(3)(i) of Regulation S–K, 17 CFR 229.303(a)(3)(i).

[71] *See, e.g.,* Item 303(a)(3)(ii) of Regulation S–K, 17 CFR 229.303(a)(3)(ii).

[72] *See, e.g.,* Instruction 3(A) to Item 303(a) of Regulation S–K, 17 CFR 229.303(a).

[73] *See, e.g.,* Instruction 3(B) to Item 303(a) of Regulation S–K, 17 CFR 229.303(a).

[74] *See* proposed Item 303(c)(3)(iv) of Regulation S–K, 17 CFR 229.303(c)(3)(iv), and proposed Item 5.E.3.(d) of Form 20–F, 17 CFR 249.220f. As part of its disclosure, a company would have to include discussion of assumptions that changed materially from a prior period but did not cause the estimate itself to change by a material amount. For example, a company could change two or more material assumptions underlying an accounting estimate, but the changes in the assumptions could have an offsetting impact, resulting in no material change to the amount of the accounting estimate recorded in the financial statements.

[75] *See* proposed Item 303(b)(3)(iii)(D) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(D). These periods correspond to the time frame currently encompassed by the MD&A requirements applicable to each of those types of companies.

[76] *Compare* APB No. 20, paragraph 33, which requires financial statement disclosure of the effect on income before extraordinary items, net income, and related per share amounts of the current period for a change in an estimate not made in the ordinary course of accounting that materially affects several future periods.

[77] Of course, the phase-in of the specific MD&A disclosure about changes in estimates would not delay the effect of the rest of the proposed changes or affect the requirements for disclosure under current MD&A rules.

director elections.[78] Among other items, the audit committee report must state whether the audit committee has discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards (''SAS'') No. 61 (codified in AU § 380), as may be modified or supplemented.[79] SAS 61 requires independent auditors to communicate certain matters related to the conduct of an audit to those who have responsibility for oversight of the financial reporting process, specifically the audit committee. With respect to accounting estimates, SAS 61 states, ''[t]he auditor should determine that the audit committee is informed about the process used by management in formulating particularly sensitive accounting estimates and about the basis for the auditor's conclusions regarding the reasonableness of those estimates.''[80] In addition, in connection with each SEC engagement, the auditor should discuss with the audit committee the auditor's judgments about the quality of the entity's accounting principles as applied in its financial reporting. The discussion should include items that have a significant impact on the financial statements (for example, estimates, judgments and uncertainties, among other items).[81]

In addition to the disclosure relating to SAS 61 (as amended), the audit committee report must state whether the audit committee has reviewed and discussed the audited financial statements with management.[82] Because that item relates to the financial statements generally, a focused discussion on critical accounting estimates may or may not result from it. Moreover, the newly required disclosure in MD&A would not be a part of the financial statements, and therefore would not necessarily be covered by that proxy statement disclosure requirement.

The existing audit committee report also requires audit committees to state whether, based on discussions with management and the auditors, the committee recommended to the board of directors that the audited financial statements be included in the company's Form 10–K or 10–KSB for the last fiscal year.[83] This disclosure requirement conveys whether the audit committee review of the financial statements and discussions with management and the auditors have provided a basis for recommending to the board that the audited financial statements be filed with the Commission. This item too does not require any specific discourse between management and the audit committee about critical accounting estimates.

We believe that senior management should discuss the company's critical accounting estimates with the audit committee of its board of directors.[84] If specific discussions between senior management and audit committees regarding the development, selection and disclosure of the critical accounting estimates were to take place, the audit committee may seek to understand the company's critical accounting estimates, the underlying assumptions and methodologies, the appropriateness of management's procedures and conclusions, and the disclosure about those accounting estimates. This type of oversight would have the potential to improve the quality and the transparency of disclosure.

Requiring a company to disclose in MD&A whether or not senior management has engaged in discussions with the audit committee about the critical accounting estimates would give investors a better understanding of whether such oversight by those responsible for the general oversight of the financial reporting process was applied to those accounting estimates and the disclosure about those accounting estimates. We therefore are proposing to require such disclosure.[85] When senior management and the audit committee have not had those discussions, we would require disclosure that they have not, and an explanation of the reasons why they have not.[86] If the company does not have an audit committee, then the proposed disclosure would address discussions with the board committee that performs equivalent functions to those of an audit committee or, if no such committee exists, the entire board of directors.[87] Unlike the audit committee report, our proposed disclosure of discussions between the audit committee and senior management would not be limited to proxy and information statements that involve the election of directors.[88]

We do not propose to require disclosure of the substance of the discussions between senior management and the audit committee. We believe that such a requirement could deter the type of open discourse that we expect to take place in those discussions.

We request comment on the proposed disclosure about discussions between senior management and the audit committee regarding the development, selection and disclosure of critical accounting estimates.

- To what extent does senior management currently discuss critical accounting estimates with the audit committee of the board of directors and the company's auditors?
- Would the proposed requirement provide useful information to investors?
- Would the proposed disclosure be a catalyst for discussion between audit committees and senior management? Could it chill discussions?
- Is there other related disclosure that should be required for the benefit of investors?
- Should we require that companies disclose any unresolved concerns of the audit committee about the critical accounting estimates or the related MD&A disclosure?
- Should we require disclosure of any specific procedures employed by the audit committee to ensure that the company's response to the proposed

[78] *See* Exchange Act Release No. 42266 (Dec. 22, 1999) [64 FR 73389] and Item 306 of Regulation S–K, 17 CFR 229.306.

[79] *See* Item 306(a)(2) of Regulation S–K, 17 CFR 229.306(a)(2), SAS No. 61, *Communication with Audit Committees* (Apr. 1988) (''SAS 61'') and SAS No. 90, *Audit Committee Communications* (Dec. 1999) (''SAS 90'') (amending SAS 61 and AU § 380).

[80] SAS 61, paragraph 8.

[81] *See* AU § 380, paragraph 11 (added by SAS 90).

[82] *See* Item 306(a)(1) of Regulation S–K, 17 CFR 229.306(a)(1).

[83] *See* Item 306(a)(4) of Regulation S–K, 17 CFR 229.306(a)(4).

[84] *See* Securities Act Release No. 8040, FR–60 (Dec. 12, 2001) [66 FR 65013].

[85] *See* proposed Item 303(b)(3)(iii)(E) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(E); proposed Item 303(c)(3)(v) of Regulation S–K, 17 CFR 229.303(c)(3)(v); and proposed Item 5.E.3.(e) of Form 20–F, 17 CFR 249.220f.

[86] The proposed MD&A disclosure is distinguishable from the audit committee report in annual proxy or information statements. Under the proxy requirements, the audit committee must prepare a report and state whether it recommended, based on its review and discussions with management and the auditors, that the financial statements be included in the Form 10–K. In our proposals, we would not require an audit committee report or recommendation, but only that the company state whether or not discussions between the audit committee and senior management occurred and, if they did not, why not. We therefore are not convinced that a liability exemption like that applicable to the audit committee report is necessary for disclosure in MD&A of whether or not a company's senior management has discussed the development and selection of critical accounting estimates, and the disclosure in MD&A regarding them.

[87] If the registrant is not a corporation, the disclosure would address senior management's discussions with the equivalent group responsible for the oversight of the financial reporting process.

[88] This disclosure would be required in annual reports filed with the Commission, annual reports to shareholders, registration statements and proxy and information statements. When a new critical accounting estimate is identified in a quarterly report, there also would be disclosure in the Form 10–Q or Form 10–QSB regarding whether the development, selection and disclosure regarding the estimate was discussed by management with the audit committee of the board of directors.

disclosure requirements is complete and fair?

• Should we consider requiring disclosure of whether the audit committee recommends the disclosure be included in the MD&A, which is akin to the disclosure required in the Item 306 audit committee report?

• Instead of the proposed disclosure, should we amend Item 306 of Regulation S–K and Regulation S–B to require that the audit committee report disclose whether the audit committee has reviewed and discussed with senior management the development, selection and disclosure regarding critical accounting estimates?

• If we were to amend Items 306 in this manner, should we also expand them to include the discussions about critical accounting estimates between senior management and the audit committee as one of the bases for the audit committee's recommendation to include the financial statements in the annual report?

• Should we expand Items 306 to require disclosure of whether, based on an audit committee's review of and discussions about the MD&A, the audit committee recommended to the board of directors that the MD&A be included in the company's annual report?

• Should we expand Items 306 to require disclosure of whether the audit committee has reviewed and discussed the entire MD&A disclosure (current and proposed) with management and/or the auditors?

• If any of a company's accounting policies diverge, to its knowledge, from the policies predominately applied by other companies in the same industry, should we require that the company disclose, possibly in connection with the audit committee report, whether the audit committee has had discussions with senior management about the appropriateness of the accounting policies being used? When such discussions have taken place, should we require that the company disclose the audit committee's unresolved concerns about the divergent accounting policies being applied? Prior to the adoption of our proposals, to what extent would a company know that its accounting policies diverge from those of other companies in its industry?

6. Disclosure Relating to Segments

Current MD&A disclosure requirements provide companies with the discretion to include a discussion of segment information where, in the company's judgment, such a discussion would be appropriate to an understanding of the company.[89] In 1989, we stated in an interpretive release, ''[t]o the extent any segment contributes in a materially disproportionate way to [revenues, profitability, and cash needs], or where discussion on a consolidated basis would present an incomplete and misleading picture of the enterprise, segment disclosure should be included.'' [90] In accordance with this interpretation, we are proposing disclosure regarding the impact of critical accounting estimates on segments of a company's business.[91] Where applicable, we believe that this disclosure would be important for investors because it would enable them to determine which reported segments' results are dependent on management's subjective estimates, and material information would be provided on a segment basis.

Under the proposals, if a company operates in more than one segment [92] and a critical accounting estimate affects fewer than all of the segments, the company would have to identify the segments it affects. A company also would have to determine whether it must include, in addition to the disclosure on a company-wide basis, a separate discussion of the critical accounting estimates for each identified segment about which disclosure is otherwise required.[93] That determination would follow an analysis similar to that in the 1989 guidance. A company would have to provide a discussion on a segment basis to the extent that discussion only on a company-wide basis would result in an omission that renders the disclosure materially misleading.[94] We would not mandate repetition on a segment basis of all matters discussed on a company-wide basis. Rather, a company would have to disclose only that information necessary to avoid an incomplete or misleading picture.

We request comment regarding identification of the segments affected and the proposed additional disclosure of the critical accounting estimates on a segment basis.

• Should we provide more guidance for determining the circumstances that warrant segment disclosure?

• Should we require the additional segment discussion only when more than one segment is affected?

D. Examples of Proposed Disclosure About Critical Accounting Estimates

To assist in understanding the scope of the MD&A disclosure that is proposed, we have developed three examples. Each example examines how a fictional public company that has identified a critical accounting estimate could draft MD&A disclosure to satisfy the proposal. The examples are illustrative only. In addition, our January 22, 2002 release provides an example of disclosure that companies should consider when discussing in MD&A trading activities involving contracts that are accounted for at fair value where a lack of market price quotations necessitates the use of fair value estimation techniques.[95]

Example 1

Background

Alphabetical Company manufactures and distributes electrical equipment used in large-scale commercial pumping and water treatment facilities. The company operates in four business segments. The company's equipment carries standard product warranties extending over a period of 6 to 10 years. If equipment covered under the standard warranty requires repair, the company provides labor and replacement parts to the customer at no cost. Historically, the costs of fulfilling warranty obligations have principally related to providing replacement parts, with labor costs representing the remainder. Over the past 3 years, the cost of copper included in replacement parts constituted approximately 35% to 40% of the total cost of warranty obligations.

A liability for the expected cost of warranty-related claims is established when equipment is sold. The amount of the warranty liability accrued reflects the company's estimate of the expected future costs of honoring its obligations under the warranty plan. Because of the long-term nature of the company's equipment warranties, estimating the

[89] *See* Item 303(a) of Regulation S–K, 17 CFR 229.303(a).

[90] *See* Securities Act Release No. 6835 (May 18, 1989) [54 FR 22427].

[91] *See* proposed Item 303(b)(3)(iii)(F) of Regulation S–B, 17 CFR 228.303(b)(3)(iii)(F); proposed Item 303(c)(3)(vi) of Regulation S–K, 17 CFR 229.303(c)(3)(vi); and proposed Item 5.E.3.(f) of Form 20–F, 17 CFR 249.220f.

[92] *See* SFAS No. 131 for requirements as to presentation of segment disclosure in the financial statements.

[93] Certain foreign private issuers providing disclosure under Item 17 of Form 20–F are not required to provide segment disclosure in their filed financial statements and therefore would not be required to provide a quantitative discussion of the identified segments.

[94] Any discussion on a segment basis would appear in the section of MD&A devoted to critical accounting estimates, and not in the separate discussion of segment results in MD&A.

[95] *See* Securities Act Release No. 8056, FR–61 (Jan. 22, 2002)[67 FR 3746], Section II.B.

expected cost of such warranties requires significant judgment. Based on management's evaluation of analysts' forecasts for copper prices, management believes a 30% decrease in copper prices or a 50% increase in copper prices is reasonably possible in the near term. In each of the last three years, warranty expense represented approximately 19% to 22% of cost of sales.

Possible MD&A Disclosure Under the Proposal

Application of Critical Accounting Policies

Alphabetical's products are covered by standard product warranty plans that extend 6 to 10 years. A liability for the expected cost of warranty-related claims is established when equipment is sold. The amount of the warranty liability accrued reflects our estimate of the expected future costs of honoring our obligations under the warranty plan. We believe the accounting estimate related to warranty costs is a ''critical accounting estimate'' because: changes in it can materially affect net income, it requires us to forecast copper prices in the distant future which are highly uncertain and require a large degree of judgment, and copper is a significant raw material in the replacement parts used in warranty repairs. The estimate for warranty obligations is a critical accounting estimate for all of our four segments.

Historically, the costs of fulfilling our warranty obligations have principally related to replacement parts, with labor costs representing the remainder. Over the past 3 years, the cost of copper included in our parts constituted approximately 35% to 40% of the total cost of warranty repairs. Over that same period, warranty expense represented approximately 19% to 22% of cost of sales.

Over the past 10 years, the price of copper has exhibited significant volatility. For example, during 1994, the price of copper rose by approximately 72%, while in 2001 the price decreased by approximately 19%. Our hedging programs provide adequate protection against short-term volatility in copper prices, as described in ''Risk Management,'' but our hedging does not extend beyond 5 years. Accordingly, our management must make assumptions about the cost of that raw material in periods 6 to 10 years in the future. Management forecasts the price of copper for the portion of our estimated copper requirements not covered by hedging. Our forecasts are based principally on long-range price forecasts for copper which are published by private research companies specializing in the copper markets.

Each quarter, we reevaluate our estimate of warranty obligations, including our assumptions about the cost of copper. During 2001, we decreased our estimated cost of unhedged copper purchases over the next 10 years by 15%, reflecting a growing excess of supply over forecasted demand, which reduced our accrued warranty costs and our cost of sales (and, accordingly, increased operating income) by $15 million. In contrast, during 2000, long-term price forecasts were essentially unchanged, so we made no adjustments to our estimated cost of unhedged copper purchases over the next 10 years. During 1999, copper prices increased by approximately 28% over the prior year. Long-term prices also reflected increases in prices over those projected in 1998. Thus, in 1999, we increased our estimated cost of unhedged copper purchases over the next 10 years (through 2009) by 15%. That increase in our estimate resulted in an $18 million addition to our accrued warranty cost and our cost of sales, and an equal reduction in our operating income.

If, for the unhedged portion of our estimated copper requirements, we were to decrease our estimate of copper prices as of December 31, 2001 by 30%, our accrued warranty costs and cost of sales would have been reduced by approximately $27 million or 6% and 4%, respectively, while operating income would have increased by 9%. If we were to increase our estimate as of December 31, 2001 by 50%, our accrued warranty costs and cost of sales would have been increased by approximately $45 million or 10% and 7%, respectively, while our operating income would have been reduced by 23%.

A very significant increase in our estimated warranty obligation, such as one reflecting the increase in copper prices that occurred in 1994, could lower our earnings and increase our leverage ratio (leverage refers to the degree to which a company utilizes borrowed funds). That, in turn, could limit our ability to borrow money through our revolving credit facilities described in ''Liquidity and Capital Resources.''

Our management has discussed the development and selection of this critical accounting estimate with the audit committee of our board of directors and the audit committee has reviewed the company's disclosure relating to it in this MD&A.

Example 2

Background

MQB Corp. is a developer and publisher of desktop publishing software that operates in two segments. MQB distributes its products primarily through third-party distributors, resellers, and retailers (customers). Like many companies in the software industry, MQB has a product return policy and has historically accepted significant product returns. MQB permits its customers to return software titles published and distributed by the company within 120 days of purchase.

MQB recognizes revenues under SOP 97–2, ''Software Revenue Recognition.'' The company ships its products FOB (Free on Board) shipping point. Therefore, legal title to the products passes to the customers upon shipment, and the company has no legal obligation for product damage in transit. Accordingly, MQB recognizes revenue upon shipment of its software products, provided that collection of payment is determined to be probable and no significant obligations on MQB's part remain. Payment is due from customers 30 days after shipment. At the time revenue is recorded, MQB accounts for estimated future returns by reducing sales by its estimate of future returns and by reducing accounts receivable by the same amount. For example, MQB reduced its gross sales and accounts receivable by 12% for its fiscal year ended December 31, 2001 to reflect estimated product returns. In the last three years, the range in which the company has reduced its gross sales and accounts receivable to reflect product returns has been between 11% and 13%.

MQB receives weekly reports from distributors and retailers regarding the amount of MQB products in their inventory. A historical correlation exists between levels of inventory held by distributors and retailers (together, the distribution channel) and the amount of returns that actually occur. The weekly reports from distributors and retailers provide the company with visibility into the distribution channel such that MQB has the ability to estimate future returns. In each of the past few years, actual returns have varied from period to period, although they have not exceeded the estimated amounts by more than 5%. The company's products are, however, subject to intense marketplace competition, including several recently introduced competing products. If actual returns significantly exceed the previously estimated amounts, it would result in materially lower sales and net income before taxes in one or more future periods.

Possible MD&A Disclosure Under the Proposal

Application of Critical Accounting Policies

Our recognition of revenue from sales to distributors and retailers (the ''distribution channel'') is impacted by agreements we have giving them rights to return our software titles within 120 days after purchase. At the time we recognize revenue, upon shipment of our software products, we reduce our measurements of those sales by our estimate of future returns and we also reduce our measurements of accounts receivable by the same amount.

For our products, a historical correlation exists between the amount of distribution channel inventory and the amount of returns that actually occur. The greater the distribution channel inventory, the more product returns we expect. For each of our products, we monitor levels of product sales and inventory at our distributors' warehouses and at retailers as part of our effort to reach an appropriate accounting estimate for returns. In estimating returns, we analyze historical returns, current inventory in the distribution channel, current economic trends, changes in consumer demand,

introduction of new competing software and acceptance of our products.

In recent years, as a result of a combination of the factors described above, we have materially reduced our gross sales to reflect our estimated amount of returns. It is also possible that returns could increase rapidly and significantly in the future. Accordingly, estimating product returns requires significant management judgment. In addition, different return estimates that we reasonably could have used would have had a material impact on our reported sales and thus have had a material impact on the presentation of the results of operations. For those reasons, we believe that the accounting estimate related to product returns is a ''critical accounting estimate.'' Our estimate of product returns is a critical accounting estimate for both of our segments. Management of the company has discussed the development and selection of this critical accounting estimate with the audit committee of our board of directors and the audit committee has reviewed the company's disclosure relating to it in this MD&A.

We are aware of several recently introduced products that compete with several of our significant products. These new competitive factors have not, to date, materially impacted returns; therefore, we have made no adjustment as a result of these factors in our estimated returns for 2001. In our highly competitive marketplace, these factors have some potential to increase our estimates of returns in the future. The introduction of new competing products has impacted our estimate of returns in the past. In 1999, we increased our estimate of returns over the previous year by 1%, as a percentage of gross sales, because of increased inventory in the distribution channel due to new products introduced by two of our competitors.

In preparing our financial statements for the year ended December 31, 2001, we estimated future product returns for all of our products to be $145 million, and we reduced our gross sales by that amount. Our 2001 estimate for returns was $20 million greater than our estimate in 2000 and $15 million greater than our estimate in 1999. From 1999 to 2000, products introduced by two of our competitors in 1998 lost market share to our products and our sales increased. Due to our increased sales in 2000, the distribution channel inventory declined over levels in 1999, which also resulted in a 2% decline in the estimated amount of returns, as a percentage of gross sales. In 2001, with the slow down in consumer spending over the prior period, distribution channel inventory grew faster than sales, necessitating an increase in the estimated returns equal to 1% of gross sales. The estimates for returns represented approximately 12%, 11% and 13% of our gross sales for 2001, 2000 and 1999, respectively.

If we were to assume that our estimate of future product returns for all of our products was changed to the upper end or lower end of the range we developed in the course of formulating our estimate, the estimate for future returns as of December 31, 2001 would range from $130 million to $160 million. Accordingly, the amounts by which we would reduce gross sales and operating income also would range from $130 million to $160 million as compared to the recorded amount of $145 million. In each of the years in the three-year period ended 2001, our actual returns have not deviated from our estimates by more than 5%. Our actual returns for 2000 and 1999 were $129 million and $134 million, respectively. If we were to change our estimate of future product returns to the high end of the range, there would be no material impact on our liquidity or capital resources.

Example 3

Background

Betascott Company manufactures and sells data storage devices including computer hard drives. The hard drive industry is subject to intense competition and significant shifts in market share amongst the competitors. In the last three years, Betascott has reported falling sales and market share, which has contributed to a fiscal year 2001 loss from operations in the hard drive segment. (This trend is separately discussed in MD&A.)

As of December 31, 2001, the company had $200 million in property, plant and equipment (''PP&E'') used in producing hard drives. The company's accounting policies require that it test long-lived assets for impairment whenever indicators of impairment exist. The 2001 fiscal year loss from operations in that segment, coupled with the company's falling sales and market share, are indicators of a potential impairment of the hard drive-related PP&E.

The company follows the provisions of FASB SFAS No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets To Be Disposed Of.*[96] That accounting standard requires that if the sum of the future cash flows expected to result from the assets, undiscounted and without interest charges, is less than a company's reported value of the assets, then the asset is not recoverable and the company must recognize an impairment. The amount of impairment to be recognized is the excess of the reported value of the assets over the fair value of those assets.

The hard drive-related PP&E accounts for approximately 67% of Betascott's PP&E. The sum of Betascott's current estimate of expected future cash flows from its hard drive-related PP&E, undiscounted and without interest charges, is near the reported value of that PP&E. In the year ended December 31, 2001, Betascott would have been required to recognize an impairment loss of approximately $30 million if its estimate of those future cash flows had been 10% lower.

Possible MD&A Disclosure Under the Proposal

Application of Critical Accounting Policies

We evaluate our property, plant and equipment (''PP&E'') for impairment whenever indicators of impairment exist. Accounting standards require that if the sum of the future cash flows expected to result from a company's asset, undiscounted and without interest charges, is less than the reported value of the asset, an asset impairment must be recognized in the financial statements. The amount of impairment to recognize is calculated by subtracting the fair value of the asset from the reported value of the asset.

As we discuss in the notes to the financial statements, we operate in four segments, one of which is the hard drive segment. In our hard drive segment, we reviewed our hard drive-related PP&E for impairment as of December 31, 2001, due to a trend of declining sales and market share. We determined that the undiscounted sum of the expected future cash flows from the assets related to the hard drive segment exceeded the recorded value of those assets, so we did not recognize an impairment in accordance with GAAP. The PP&E in our hard-drive segment represents approximately two-thirds of our total PP&E.

We believe that the accounting estimate related to asset impairment is a ''critical accounting estimate'' because: (1) It is highly susceptible to change from period to period because it requires company management to make assumptions about future sales and cost of sales over the life of the hard drive-related PP&E (generally seven years); and (2) the impact that recognizing an impairment would have on the assets reported on our balance sheet as well as our net loss would be material. Management's assumptions about future sales prices and future sales volumes require significant judgment because actual sales prices and volumes have fluctuated in the past and are expected to continue to do so. Management has discussed the development and selection of this critical accounting estimate with the audit committee of our board of directors and the audit committee has reviewed the company's disclosure relating to it in this MD&A.

In estimating future sales, we use our internal budgets. We develop our budgets based on recent sales data for existing products, planned timing of new product launches, customer commitments related to existing and newly developed products, and current unsold inventory held by distributors.

Our estimates of future cash flows assume that our sales of hard drive inventory will remain consistent with current year sales. While actual sales have declined by an average of approximately 2% per year during the last three years, our introduction of the Stored line of hard drives in August 2001 has resulted in a 0.5% increase in market share over the last five months of 2001, and a

[96] SFAS No. 144 superseded SFAS No. 121 and is effective for financial statements issued for fiscal years beginning after December 15, 2001.

corresponding increase in sales of 5% over the comparable 5-month period last year. We therefore have assumed that sales will not continue to decline in the future. We have also assumed that our costs will have annual growth of approximately 2%. This level of costs is comparable to actual costs incurred over the last two years, following the 1999 restructuring of the hard drive division (which is described in the note 2 to the financial statements).

In each of the last two years, we have tested the hard drive-related PP&E for impairment and in each year we determined that, based on our assumptions, the sum of the expected future cash flows, undiscounted and without interest charges, exceeded the reported value and therefore we did not recognize an impairment. Because 2001 sales were lower than those in 2000 and 1999, despite the improvement in the latter part of the year, and because our estimates of future cash flows are assumed to be consistent with current year sales, the current year impairment analysis includes estimated sales that are 2% and 5% less than those assumed in the 2000 and 1999 impairment tests, respectively.

As of December 31, 2001, we estimate that our future cash flows, on an undiscounted basis, are greater than our $200 million investment in hard drive-related PP&E. Any increases in estimated future cash flows would have no impact on the reported value of the hard drive-related PP&E. In contrast, if our current estimate of future cash flows from hard drive sales had been 10% lower, those cash flows would have been less than the reported amount of the hard drive-related PP&E. In that case, we would have been required to recognize an impairment loss of approximately $30 million, equal to the difference between the fair value of the equipment (which we would have determined by calculating the discounted value of the estimated future cash flows) and the reported amount of the hard drive-related PP&E. A $30 million impairment loss would have reduced PP&E and Total Assets as of December 31, 2001 by 10% and 3%, respectively. That impairment loss also would have increased Net Loss Before Taxes, for the year ended December 31, 2001, by 100%.

If we had been required to recognize an impairment loss on our hard-drive related PP&E, it would likely not have affected our liquidity and capital resources because, even with the impairment loss, we would have been within the terms of the tangible net-worth covenant in our long-term debt agreement discussed in note 5 to the financial statements.

E. Auditor Examination of MD&A Disclosure Relating to Critical Accounting Estimates

A company's management bears primary responsibility for its accounting estimates. Auditors also have important responsibilities regarding a company's accounting estimates. A company's auditor currently is responsible for evaluating the reasonableness of the accounting estimates made by management in the context of the financial statements taken as a whole.[97] When a company's audited financial statements are included in an annual report filed with the Commission, the independent auditor is required to read the information in the entire filed document, including the MD&A, and consider whether such information, or the manner of its presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the financial statements.[98]

Despite the current auditing standards, and the auditor's consideration of the proposed MD&A disclosure that may take place by virtue of them, we are considering whether to take additional steps with a view to ensuring the accuracy and reliability of the proposed disclosure. Subjecting the MD&A disclosure to the auditing process itself would require the imposition of auditing standards, including examination of the disclosure itself, application of auditing processes regarding internal controls, coverage in management representations of material relevant to the disclosure and other procedures. One possible approach would be to adopt a requirement that an independent auditor must examine, in accordance with Attestation Standards,[99] the new MD&A disclosure relating to critical accounting estimates.

The American Institute of Certified Public Accountants has established standards and procedures when an auditor is engaged by a company to examine and render an opinion that the disclosure in a company's MD&A satisfies applicable Commission requirements.[100] An auditor's objective in an examination is to express an opinion on:

- Whether the MD&A presentation includes in all material respects the required elements of the disclosure mandated by the Commission;
- Whether the historical financial amounts have been accurately derived, in all material respects, from the company's financial statements; and
- Whether the underlying information, determinations, estimates and assumptions of the company provide a reasonable basis for the disclosures contained in the MD&A.[101]

To complete an examination, an auditor must examine documents and records and accumulate sufficient evidence in support of the disclosures and assumptions and take other steps to get reasonable assurance of detecting both intentional and unintentional misstatements that are material to the MD&A presentation.[102] To accept an examination engagement, an auditor must have sufficient knowledge about the company and its operations. AT § 701 therefore requires that an auditor must have at least audited the company's financial statements for the most recent period covered by the MD&A, and the other periods covered by the MD&A must have been audited by it or another auditor.[103]

Auditor examinations of MD&A disclosure are, we believe, undertaken on few occasions. Some companies have engaged independent auditors to conduct an examination of their MD&A disclosures either in connection with their initial public offering or after a major restructuring or acquisition when the company disclosure is being presented on a pro forma basis.[104] In

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[97] *See* AU § 342, paragraph 4. In evaluating the reasonableness, the auditor's objective is ''to obtain sufficient competent evidential matter to provide a reasonable assurance that—

a. All accounting estimates that could be material to the financial statements have been developed.

b. Those accounting estimates are reasonable in the circumstances.

c. The accounting estimates are presented in conformity with applicable accounting principles and are properly disclosed.''

AU § 342, paragraph 7. The auditor normally focuses on key factors and assumptions that are significant to the accounting estimate, that are sensitive to variations, that are deviations from historical patterns or that are subjective and susceptible to misstatement and bias. *See* AU § 342, paragraph 9.

[98] *See* AU § 550, *Other Information in Documents Containing Audited Financial Statements* (''AU § 550'').

[99] *See* Codification of Statements on Standards for Attestation Engagements (''AT'') § 101, *Attest Engagements* and AT § 701, *Management's Discussion and Analysis.*

[100] AT § 701 contemplates two levels of service by an auditor with respect to MD&A: an ''examination'' of an MD&A presentation and a more limited ''review'' of an MD&A presentation. Unlike an examination, a review culminates with the auditor giving negative assurance. The auditor's review report states whether any information came to the auditor's attention to cause him or her to believe that: the MD&A presentation taken as a whole does not include in all material respects the required elements of the disclosure; the historical financial amounts have not been accurately derived, in all material respects, from the company's financial statements; or the underlying information, determinations, estimates and assumptions of the company do not provide a reasonable basis for the disclosures contained in the MD&A. In undertaking a review, an auditor is expected to apply analytical procedures and make inquiries of people at the company who are responsible for financial, accounting and operational matters, but is not expected to test accounting records through inspection or observation, obtain corroborating evidence in response to inquiries, or take other steps required during an MD&A examination. An auditor's review report is not intended to be filed with the Commission. *See* AT § 701, paragraph 2.

[101] *See* AT § 701, paragraph 5.

[102] *See* AT § 701, paragraphs 28–29.

[103] *See* AT § 701, paragraph 6.

[104] Goldman Sachs engaged an auditor to review its MD&A disclosure in connection with its initial

one case, an auditor examination of MD&A was undertaken pursuant to a settlement with the Commission of an enforcement action alleging material deficiencies in the company's past MD&A disclosure.[105]

We solicit comment with respect to independent auditor examinations of the proposed MD&A disclosure regarding critical accounting estimates.

- Should we require that the critical accounting estimates disclosure in the MD&A undergo an auditor examination comparable to that enumerated in AT § 701?
- Would these engagements significantly improve the disclosure provided in MD&A?
- In practice, when companies engage auditors to examine the MD&A pursuant to AT § 701, does it elicit a higher quality of disclosure than when auditors consider only, as currently required, whether an MD&A is materially inconsistent with the financial statements?
- If we were to require examinations by auditors of part or all of MD&A disclosures, should we also require that a company file, or disclose the results of, the auditor's reports?
- If we do not require auditors' examinations of MD&A disclosure but an auditor nonetheless examines MD&A disclosure on critical accounting estimates, should we require that the auditor's report be filed or the results be disclosed?
- What would be the relative benefits and costs of a requirement for an auditor examination with respect to the critical accounting estimates portion of the MD&A?
- Should we require an auditor ''review'' under standards comparable to AT § 701,[106] as opposed to an auditor ''examination'' of the critical accounting estimates MD&A disclosure?
- Do current requirements relating to what an auditor must consider make an examination or review of the proposed MD&A disclosure under standards comparable to AT § 701 unnecessary?
- If we do not require auditor examination or review, are there other steps we should take to help ensure the quality of disclosure in this proposed section of MD&A?

F. Quarterly Updates

Material changes relating to critical accounting estimates may occur from fiscal period to fiscal period. For example, management could materially change an accounting estimate previously disclosed as a critical accounting estimate because it changes the methodology for computing it. A company could determine that an additional accounting estimate met the standards and is a critical accounting estimate for the period subsequent to its most recent annual or quarterly report. A company also could materially change one of the important assumptions underlying an existing critical accounting estimate (which may or may not result in a change to the critical accounting estimate depending on what changes in other assumptions underlying the estimate are made). Any of those changes could have a material effect on the company's financial condition, changes in financial condition or results of operations. We expect that U.S. companies would be evaluating accounting estimates and the underlying assumptions and methodologies on at least a quarterly basis [107] and therefore we believe that quarterly updates to reflect material developments would be appropriate. Disclosure of material developments made only at the end of each fiscal year also may not identify changes quickly enough to inform investors adequately.

In quarterly reports on Form 10–Q or Form 10–QSB, companies would be required to provide an update to the MD&A information related to critical accounting estimates discussed in the company's last filed annual or quarterly report under the Exchange Act.[108] Newly identified critical accounting estimates would be disclosed in the same manner as in an annual report. If other material changes have occurred that would render the critical accounting estimates disclosure in the company's latest report materially out of date or otherwise materially misleading, we propose that those changes and their effect be described in the quarterly report. The proposed rules would not, however, require quarterly updates with regard to the proposed quantitative and qualitative discussion concerning past material changes in critical accounting estimates in annual reports, registration statements and proxy and information statements.

We solicit comment on the quarterly updating requirement for U.S. companies.

- Are there some accounting estimates or material assumptions or methodologies that would normally be considered by companies only on a less frequent basis than quarterly? If so, which ones? Should they be omitted from the quarterly updating requirement on that basis?
- Is the scope of the disclosure required in a quarterly update appropriate? If not, what should be added or omitted?

G. Proposed Disclosure About Initial Adoption of Accounting Policies

A company initially adopts an accounting policy when events or transactions that affect the company occur for the first time, when events or transactions that were previously immaterial in their effect become material, or when events or transactions occur that are clearly different in substance from previous events or transactions. For example, a company may for the first time enter into transactions involving derivative instruments, such as interest rate swaps, or may begin selling a new type of product that has delivery terms and conditions that are different from those associated with the products the company has previously been selling.

If an initially adopted accounting policy has a material impact on the company's financial condition, changes in financial condition or results of operations, that impact will likely be of interest to investors, to financial analysts and others. If a company considers an accounting policy that it has initially adopted to be a significant accounting policy, the company would provide certain disclosures about that accounting policy as required by APB No. 22. Those disclosures are typically in the first note to the financial statements.[109] The disclosure provided in the notes to the financial statements, however, may not adequately describe,

public offering. *See* Form S–1, Commission File No. 333–74449. In addition, in the course of reading agreements between issuers and their underwriters created in connection with registered offerings, the staff has noted that approximately 50 companies have agreed to engage an auditor to conduct an examination of the company's MD&A disclosure as a condition to closing.

[105] In 1998, we issued a cease-and-desist order in a settlement with Sony Corporation that required Sony to engage an independent auditor to examine its MD&A disclosure for the fiscal year ending March 31, 1999. *See SEC* v. *Sony Corporation,* Litigation Release No. 15832 (Aug. 5, 1998).

[106] *See* supra fn. 100.

[107] The procedures performed by an independent accountant to issue a review report on the financial statements filed in a Form 10–Q generally would include reading information such as that found in the MD&A section of the Form 10–Q. Further, the independent accountant's association with those financial statements would require the independent accountant to read the MD&A. *See* AU § 722, *Interim Financial Information,* paragraph 35 and AU § 550, paragraph 4.

[108] *See* proposed Item 303(b)(3)(v) of Regulation S–B, 17 CFR 228.303(b)(3)(v), and proposed Item 303(c)(5) of Regulation S–K, 17 CFR 229.303(c)(5). To assist companies in preparing quarterly updates, we would allow them to presume that investors have read, or have access to, the discussion of critical accounting estimates in their previously filed Exchange Act annual reports and any quarterly reports filed subsequent to the most recent annual report.

[109] *See* APB No. 22, paragraphs 12 and 15.

in a qualitative manner, the impact of the initially adopted accounting policy or policies on the company's financial presentation. We are therefore proposing additional MD&A disclosure to further describe, where a material impact exists, the initial adoption of accounting policies.[110] The proposed MD&A disclosure would be provided in companies' filed annual reports, annual reports to shareholders, registration statements and proxy and information statements and would include description of:

- The events or transactions that gave rise to the initial adoption of an accounting policy;
- The accounting principle that has been adopted and the method of applying that principle; and
- The impact (discussed qualitatively) resulting from the initial adoption of the accounting policy on the company's financial condition, changes in financial condition and results of operations.

If, upon initial adoption of one of those accounting policies, a company is permitted a choice among acceptable accounting principles,[111] the company also would be required to explain in MD&A that it had made a choice among acceptable alternatives, identify the alternatives, and describe why it made the choice that it did. In addition, where material, the company would have to provide a qualitative discussion of the impact on the company's financial condition, changes in financial condition and results of operations that the alternatives would have had. Finally, if no accounting literature exists that governs the accounting for the events or transactions giving rise to the initial adoption of a material accounting policy (*e.g.,* the events or transactions are unusual or novel or otherwise have not been contemplated in past standard-setting projects), the company would be required to explain its decision regarding which accounting principle to use and which method of applying that principle to use.

We seek comment on the proposed disclosures related to initial adoption of accounting policies.

- Would the proposed disclosures about initial adoption of accounting policies provide useful information to investors and other readers of financial reports?
- Are there particular situations involving the initial adoption of a material accounting policy for which we should require additional disclosure? If so, what are those situations and what additional disclosure should we require?
- Should we require companies to disclose, in MD&A or in the financial statements, the estimated effect of adopting accounting policies that they could have adopted, but did not adopt, upon initial accounting for unusual or novel transactions?
- What would be the costs for companies to prepare disclosure about the effects of alternative accounting policies that could have been chosen but were not?
- Would investors be confused if companies presented disclosure of the effects of acceptable alternative policies that were not chosen?
- Should we require in MD&A a discussion of whether the accounting policies followed by a company upon initial adoption differ from the accounting policies applied, in similar circumstances, by other companies in its industry, and the reasons for those differences? Please explain. If such a discussion should be required, please identify the specific disclosures companies should make.
- Would a company know the policies applied in similar circumstances by other companies in its industry? If not, would auditing firms or other financial advisors be able to assist companies in determining whether their accounting policies generally diverge from industry practices?

H. Disclosure Presentation

The proposals would require that a company present the required information in a separate section of MD&A. While the proposed disclosure may relate to other aspects of the discussion in MD&A, such as the results of operations or liquidity and capital resources, we have chosen to separate it both to highlight the discussion and because we believe the proposed discussion would present information that is better communicated separately to promote understanding.

The proposed MD&A discussion must be presented in language, and a format, that is clear, concise and understandable to the average investor.[112] The disclosure should not be presented in such a way that only an investor who is also an accountant or an expert on a particular industry would be able to understand it fully. To reinforce the importance of the disclosure being presented in a manner that investors will understand, we also would specify that the proposed disclosure must not be presented, for example, solely as a single discussion of the aggregate consequences of multiple critical accounting estimates or the aggregate consequences of the initial application of multiple new accounting policies.[113] Because a company may identify and discuss more than one critical accounting estimate or more than one newly adopted accounting policy, and those estimates or those policies could materially affect a company's financial presentation in differing ways, a separate discussion of the application of each estimate and each new accounting policy will facilitate investors' understanding of the implications of each one.

Boilerplate disclosures that do not specifically address the company's particular circumstances and operations also would not satisfy the proposed requirements.[114] Disclosure that could easily be transferred from year to year, or from company to company, with no change would neither inform investors adequately nor reflect the independent thinking that must accompany the periodic assessment by management that is intended under the proposal. Finally, the purpose of the proposed disclosure would be hindered if a company were to include disclosures that consisted principally of blanket disclaimers of legal responsibility for its application of a new accounting policy or its development of its critical accounting estimates in light of the uncertainties associated with them. While the Commission fully expects companies to craft the proposed disclosure responsibly to take advantage of any available safe harbors, simple disclaimers of legal liability would be contrary to the disclosure goals underlying the proposal and would not be permitted.[115]

We solicit comment on the disclosure presentation aspects of the proposals.

- Should the proposed disclosure be presented in a separate section of MD&A

[110] *See* proposed Item 303(b)(3)(iv) of Regulation S–B, 17 CFR 228.303(b)(3)(iv); proposed Item 303(c)(4) of Regulation S–K, 17 CFR 229.303(c)(4); and proposed Item 5.E.4. of Form 20–F, 17 CFR 249.220f. These proposed disclosures would not be required if the initial adoption of an accounting policy solely results from adoption of new accounting literature issued by a recognized accounting standard setter (including, in the U.S., new accounting pronouncements or rules issued by the FASB, AICPA or SEC or a new consensus of the Emerging Issues Task Force (EITF)).

[111] *See supra* fn. 31 and accompanying text.

[112] *See* proposed Instruction 3 to paragraph (b)(3) of Item 303 of Regulation S–B, 17 CFR 228.303(b)(3); proposed Instruction 4 to paragraph (c) of Item 303 of Regulation S–K, 17 CFR 229.303(c); and proposed Instruction 3 to Item 5.E. of Form 20–F, 17 CFR 249.220f.

[113] *Id.*

[114] *Id.*

[115] *Id.*

or should we require that it be integrated into the other discussions of financial condition, changes in financial condition, results of operations and liquidity and capital resources when the proposed disclosure is closely related to an aspect discussed in those separate sections of MD&A?

- Should other requirements relating to the language and format be added to the requirement for clear, concise and understandable disclosure? If so, what requirements?

I. Application to Foreign Private Issuers

In annual reports and registration statements filed with the Commission by foreign private issuers,[116] we propose to apply the same MD&A disclosure requirements regarding the application of accounting policies that would apply to U.S. companies.[117] Foreign private issuers, however, may present their financial statements either in accordance with U.S. GAAP, in accordance with GAAP of a foreign country, or in accordance with International Accounting Standards and International Financial Reporting Standards issued by the International Accounting Standards Committee and the International Accounting Standards Board. If financial statements are presented in accordance with non-U.S. GAAP, a reconciliation to U.S. GAAP accompanies them. The MD&A disclosure that foreign private issuers currently make in documents filed with the Commission [118] must focus on the primary financial statements, whether those are prepared in accordance with non-U.S. GAAP or U.S. GAAP, although the reconciliation also must be taken into account.[119]

The proposed MD&A disclosure regarding critical accounting estimates would do the same. If the primary financial statements were in non-U.S. GAAP, the company would have to consider critical accounting estimates in connection with both its primary financial statements and its reconciliation to U.S. GAAP. The reasons are essentially two. First, a company could make an accounting estimate under non-U.S. GAAP that would not constitute a critical accounting estimate or could use a method under non-U.S. GAAP that would not involve an estimate, but in applying U.S. GAAP in the reconciliation could be required to make different assumptions that involve highly uncertain matters therefore causing it to be highly susceptible to change where change would have a material impact. For example, non-U.S. GAAP may permit or require derivative instruments held as investments to be reported at cost (or not recognized), while U.S. GAAP would require the same instruments to be reported at fair value. If the instruments are not traded and therefore no quoted market prices are available, assumptions about highly uncertain matters would be required to estimate fair value for purposes of the reconciliation.

Second, a foreign private issuer could apply different accounting methods under U.S. GAAP than under non-U.S. GAAP, and while both may involve critical accounting estimates, they may do so for different reasons that investors would need to understand. For example, both non-U.S. GAAP and U.S. GAAP may require recognition of liabilities for environmental or mass tort claims. However, the methodologies, assumptions and judgments necessary to estimate the amount to recognize may be significantly different under the two different GAAPs. Thus, a foreign private issuer would be required also to include the proposed disclosure for any critical accounting estimate that is related to the application of U.S. GAAP.[120]

Similarly, the proposed MD&A disclosures about the initial adoption of accounting policies would focus on the primary financial statements but also take into account the reconciliation to U.S. GAAP. When a foreign private issuer initially adopts an accounting policy under non-U.S. GAAP, it may have different acceptable alternative principles available to it than it would if it were initially adopting an accounting policy under U.S. GAAP. Those alternatives may be unfamiliar to investors. Accordingly, we would require that the foreign private issuer provide the proposed disclosure about initial adoption in relation to its primary financial statements. Foreign private issuers also would be required to consider the reconciliation to U.S. GAAP. The reconciliation would not necessarily present an initial adoption of an accounting policy simply because the company is initially adopting a policy under non-U.S. GAAP. In the event that it does, however, and it has the requisite material impact on the foreign private issuer's financial presentation, we believe disclosure would be appropriate.

The Commission has fundamentally conformed the non-financial statement disclosure requirements for foreign private issuers to the non-financial statement disclosure requirements adopted by the International Organization of Securities Commissions (IOSCO).[121] The MD&A-equivalent provision is intended to mirror in substance the MD&A requirements for U.S. companies in Regulation S–K.[122] Our application of the proposed critical accounting estimates disclosure and the disclosure regarding initial adoption of an accounting policy to foreign private issuers is consistent with the current approach to MD&A. MD&A disclosure is narrative financial disclosure and the proposed MD&A disclosure can be viewed particularly as an important new aspect of financial disclosure.

Foreign private issuers are not required to submit quarterly reports on Form 10–Q or Form 10–QSB to the Commission. Instead, foreign private issuers submit information on Form 6–K, which encompasses only information that the issuer makes public under its home country requirements.[123] In addition, foreign private issuers are exempt from U.S. proxy and information statement disclosure

[116] Foreign private issuers are non-governmental foreign issuers that primarily are owned by non-U.S. investors or are primarily located, doing business and managed outside the U.S. *See* 17 CFR 240.3b–4. Foreign governments, and Canadian issuers filing reports and registration statements with the Commission pursuant to Canadian disclosure requirements under the Multijurisdictional Disclosure System with Canada, would be unaffected by the proposals.

[117] Under the proposals, the MD&A disclosure would apply to foreign private issuers regardless of whether they reconcile in accordance with Item 17 or Item 18 of Form 20–F.

[118] Item 5 in Form 20–F, the provision parallel to disclosure entitled ''MD&A'' for domestic issuers, is entitled ''Operating and Financial Review and Prospects.''

[119] Instruction 2 to Item 5 states that the ''discussion should focus on the primary financial statements presented in the document. You should refer to the reconciliation to U.S. GAAP, if any, and discuss any aspects of the differences between foreign and U.S. GAAP, not otherwise discussed in the reconciliation, that you believe are necessary for an understanding of the financial statements as a whole.''

[120] *See* proposed Instruction 2 to Item 5 of Form 20–F, 17 CFR 249.220f.

[121] See Securities Act Release No. 7745 (Sept. 28, 1999) [64 FR 53900].

[122] Although the wording of the MD&A requirement in Form 20–F was revised in 1999, the Commission's adopting release noted that we interpret that Item as calling for the same disclosure as Item 303 of Regulation S–K. *See* Securities Act Release No. 7745 (Sept. 28, 1999) [64 FR 53900 at 59304]. In addition, Instruction 1 to Item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under Item 303 of Regulation S–K (Securities Act Release No. 6835 (May 18, 1989) [54 FR 22427]) for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F.

[123] Many foreign country disclosure systems do not require quarterly reporting. Nonetheless, some registered foreign private issuers do report financial information on a quarterly basis. If a foreign regulatory authority were to adopt the proposed MD&A requirements, foreign private issuers subject to it would provide the information on Form 6–K.

requirements. [124] Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it would not be required to update the proposed MD&A disclosure more frequently than annually. Foreign private issuers could, however, voluntarily disclose newly identified critical accounting estimates and any other material changes to the most recent MD&A disclosure on Form 6–K, and we encourage them to do so.

We request comment regarding the proposed MD&A disclosure of the application of critical accounting policies as it relates to foreign private issuers.

- Should we apply different standards for foreign private issuers with respect to the proposed MD&A disclosure?
- Are there specific items of the proposed disclosure that would be less appropriate for foreign private issuers? If so, what should substitute for that disclosure?
- Should we consider applying an updating requirement to the proposed critical accounting estimates disclosure for foreign private issuers that do not file quarterly reports? If so, what should trigger that updating requirement?
- Are there reasons to distinguish this aspect of MD&A disclosure when foreign private issuers otherwise may not prepare MD&A-equivalent disclosure on a quarterly basis?

J. Application to Small Business Issuers

Small business issuers [125] are permitted to register and report under somewhat different disclosure requirements than those applicable to larger companies. With respect to MD&A disclosure, the requirements for small business issuers and larger companies are substantially similar.[126] One exception, however, is that small business issuers that have not had revenues from operations in each of the last two fiscal years (or the last fiscal year and any interim period presented in the furnished financial statements) must provide business plan disclosure rather than MD&A disclosure.[127] Those small business issuers must discuss in the business plan disclosure matters such as: how they will satisfy their requirements for cash and raise additional funds in the next 12 months; planned product research and development in that period; expected acquisitions or dispositions of plant and significant equipment; and anticipated significant changes in the number of employees.

Under our proposals, we would not apply the new requirements for MD&A disclosure to the small business issuers disclosing their business plans instead of providing MD&A disclosure. We believe a modified approach is consistent with the objectives underlying the small business issuer disclosure system's alteration of the MD&A disclosure requirements for these companies. Thus, we would not add to the compliance burdens for these small companies. Small business issuers with a recent history of revenues would be required to provide the proposed MD&A disclosure.

We request comment regarding the application to small business issuers of the proposed MD&A disclosure.

- Should we require the proposed MD&A disclosure for small business issuers with no recent revenues even though MD&A disclosure by them is otherwise not required? If so, why?
- Are there modifications or simplifications to the proposed disclosure requirements that we could make, consistent with our ongoing simplification and reduction of burden for small business issuers, that still would achieve the goal of providing investors with an adequate understanding of the implications of management's critical accounting estimates and its initial adoption of accounting policies with a material impact?
- Should we create an exemption from the quarterly updating, or simplify it, for small business issuers?

K. Application of Safe Harbors for Forward-Looking Information

As we note in the proposed MD&A requirements, companies preparing disclosure under the proposal that would constitute a forward-looking statement should consider the conditions under which several existing safe harbors apply.[128] As defined in the relevant statutory provisions, a ''forward-looking statement'' generally is

- A statement containing a projection of revenues, income (or loss), earnings (or loss) per share, capital expenditures, dividends, capital structure, or other financial items;
- A statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;
- A statement of future economic performance, including any such statement contained in MD&A;
- Any statement of assumptions underlying or relating to any statement described in the three bullet points above; or
- Any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer.[129]

The Exchange Act and the Securities Act contain parallel safe harbor protection for forward-looking statements against private legal actions that are based on allegations of a material misstatement or omission.[130] In addition, two Commission rules under those Acts that pre-date the adoption of the statutory safe harbors also provide protection for forward-looking statements.

The statutory safe harbors provide three separate bases for a company to claim the protection against liability for forward-looking statements made in the company's MD&A. First, a forward-looking statement would fall within that safe harbor if it is identified as forward-looking and it is accompanied by meaningful cautionary statements that identify important factors that could cause actual results to differ materially from those in the forward-looking statement. Second, the safe harbor protects from private liability any forward-looking statement that is not material. Finally, the safe harbor precludes private liability if a plaintiff fails to prove that the forward-looking statement was made by or with the approval of an executive officer of the

[124] *See* 17 CFR 240.3a12–3(b).

[125] ''Small business issuer'' is defined to mean any entity that (1) has revenues of less than $25,000,000, (2) is a United States or Canadian issuer, (3) is not an investment company, and (4) if a majority-owned subsidiary, has a parent corporation that also is a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding equity securities held by non-affiliates) of $25,000,000 or more. *See* 17 CFR 228.10.

[126] *Compare* Item 303 of Regulation S–B, 17 CFR 228.303, to Item 303 of Regulation S–K, 17 CFR 229.303.

[127] *See* Item 303(a) of Regulation S–B, 17 CFR 228.303(a).

[128] *See* proposed Instruction 2 to Item 303 of Regulation S–B, 17 CFR 228.303; proposed Instruction 2 to Item 303(c) of Regulation S–K, 17 CFR 229.303(c); and proposed Instruction 2 to Item 5.E of Form 20–F, 17 CFR 249.220f.

[129] *See* 15 U.S.C. 77z–2 and 78u–5.

[130] While the statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with U.S. GAAP, they do cover MD&A disclosures. The statutory safe harbors would not apply, however, if the MD&A forward-looking statement were made in connection with: an initial public offering, a tender offer, an offering by a partnership or a limited liability company, a roll-up transaction, a going private transaction, an offering by a blank check company or a penny stock issuer, or an offering by an issuer convicted of specified securities violations or subject to certain injunctive or cease and desist actions. *See* 15 U.S.C. 77z–2(b) and 78u–5(b).

company who had actual knowledge that it was false or misleading. The statutory safe harbors cover statements by reporting companies, persons acting on their behalf, outside reviewers retained by them, and their underwriters (when using information from, or derived from, the companies).

The Commission safe harbor rules that apply to forward-looking statements are Rule 175 under the Securities Act and Rule 3b–6 under the Exchange Act.[131] Under those rules, a forward-looking statement made by or on behalf of a company is deemed not to be a fraudulent statement if it is made in good faith and made or reaffirmed with a reasonable basis. The rule-based safe harbors apply to a company if it is a reporting company at the time it makes the forward-looking statement or if it is not a reporting company but it is making the statement in a Securities Act registration statement[132] or an Exchange Act registration statement. The safe harbors cover forward-looking statements in filed documents, in annual reports to shareholders and in Part 1 of Forms 10–Q and 10–QSB.[133]

Some of the proposed MD&A disclosure, but not all of it, would require a company to make forward-looking statements. For example, a company's disclosure of the reasonably possible, near-term changes in its most material assumption(s) underlying accounting estimates would qualify as forward-looking statements, but its quantitative disclosure of the changes it made to its accounting estimates during the past three years would not. Other examples of forward-looking statements that could be made in response to the proposed mandates are: A discussion of the assumptions underlying an estimate that involve, for example, projections of future sales; and a discussion of the expected effect if a known uncertainty were to come to fruition and result in a change in management's assumptions.

In light of the forward-looking statements that would be required, we propose to delete the statements in the existing MD&A rules that indicate that companies are not required to make forward-looking statements under those rules.[134] New Instructions would note that forward-looking statements are required, provide some examples of required forward-looking statements and alert companies preparing the proposed MD&A disclosure to consider the terms, conditions and scope of the safe harbors in drafting their disclosure.

We request comment regarding the application of safe harbors for forward-looking information to the proposed MD&A disclosure.

- Is there any need for further guidance from the Commission with respect to the application of either the statutory or rule safe harbors?

IV. General Request for Comment

The Commission is proposing these amendments to the MD&A requirements to improve the quality and relevance of explanatory disclosure about a company's financial condition, changes in financial condition, results of operations and reasonably likely trends, demands, commitments, events and uncertainties affecting a company. We welcome your comments. We solicit comment, both specific and general, upon each component of the proposals. If you would like to submit written comments on the proposals, to suggest additional changes or to submit comments on other matters that might affect the proposals, we encourage you to do so.

We also solicit comment on the following general aspects of the proposals:

- Is the additional information elicited by the proposals useful to investors, other users of company disclosure and readers of a company's financial statements? If not, how can it be improved to achieve that goal?
- In addition to the requirements we propose, are there particular aspects of critical accounting estimates or their development or impact that the proposals should specifically require companies to address? If so, what are they?
- In addition to the requirements we propose, are there particular aspects concerning a company's initial adoption of an accounting policy that the proposals should specifically require companies to address? If so, what are they?
- Is disclosure necessary concerning the procedures that management follows in selecting its critical accounting estimates? If so, what additional disclosure should be provided?
- Is additional disclosure or regulation necessary or appropriate concerning the role of the audit committee in discussing the critical accounting estimates and the disclosure about them that management drafts?
- In addition to the proposed disclosure, should we adopt a specific requirement that a company must provide any other information that is needed to make the proposed disclosure reflective of management's view of the critical accounting estimates and the initially adopted policies being discussed?
- For critical accounting estimates of fair value, should we mandate the example in FR–61 [135] as part of these rules? If yes, do other areas exist for which that type of detailed disclosure would be appropriate?
- If the proposed disclosure would involve competitive or other sensitive information, are there any mechanisms that would ensure full and accurate disclosure while reducing a company's risk of competitive harm?
- Are there some aspects of the proposed disclosure that should be retained while eliminating other parts of the proposed disclosure? We solicit comment on the desirability of adopting some sections of the proposed rules, but not all sections.

Any interested person wishing to submit written comments on any aspect of the proposals, as well as on other matters that might have an impact on the proposals, is requested to do so. In addition, we request comment on whether any further changes to our rules

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[131] *See* 17 CFR 230.175 and 17 CFR 240.3b–6. Forward-looking statements covered by the safe harbors under Rules 175 and 3b–6 are:

- Projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, other financial items;
- Management's plans and objectives for future operations;
- Statements of future economic performance in MD&A and
- Statements of assumptions underlying or relating to any of the above.

[132] Thus, unlike the statutory safe harbors, the Rule 175 safe harbor would protect MD&A forward-looking statements made in a registration statement or prospectus for an initial public offering.

[133] The rule safe harbors also cover statements that reaffirm forward-looking statements made in those documents and forward-looking statements made prior to filing or submission of those documents that are reaffirmed in those documents.

In addition to the statutory and rule safe harbors directed at forward-looking statements, companies preparing the proposed MD&A disclosure also could be protected by the ''bespeaks caution'' legal doctrine that has developed through case law and is recognized by most circuit courts of appeal. *See, e.g., Lilley* v. *Charren,* 2001 U.S. App. LEXIS 19430 (9th Cir. 2001); *EP Medsystems, Inc.* v. *Echocath Inc.,* 235 F.3d 865; (3d Cir. 2000); *Parnes* v. *Gateway 2000,* 122 F.3d 539 (8th Cir. 1997). The bespeaks caution doctrine recognizes that forecasts, projections and expectations must be read in context and that accompanying cautionary language can render a misstatement or omission immaterial or render a plaintiff's reliance on it unreasonable. For a forward-looking statement to be covered by the bespeaks caution doctrine, there must be adequate cautionary language that warns investors of the potential risks related to the forward-looking statement.

[134] *See* Instruction 2 to Item 303 of Regulation S–B, 17 CFR 228.303; Instruction 7 to Item 303(a) of Regulation S–K, 17 CFR 229.303(a); Instruction 6 to Item 303(b) of Regulation S–K, 17 CFR 229.303(b); and Instruction 3 to Item 5 of Form 20–F, 17 CFR 249.220f.

[135] *See* Securities Act Release No. 8056, FR–61 (Jan. 22, 2002)[67 FR 3746], Section II.B. (providing an example of a critical accounting estimate related to non-exchange-traded contracts accounted for at fair value).

and forms are necessary or appropriate to implement the objectives of the proposals. Please submit three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also submit comments electronically to the following e-mail address: *rule-comments@sec.gov.* [136] All comments should refer to file number S7–16–02. If you are commenting by e-mail, include this file number in the subject line. We will make comments available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, NW, Washington, DC 20549–0102. In addition, we will post electronically submitted comments on our Internet website (*www.sec.gov*).

V. Paperwork Reduction Act

A. Background

The proposed amendments to Regulations S–B, S–K [137] and Form 20–F contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[138] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[139] The titles for the collections of information are:

(1) ''Form S–1'' (OMB Control No. 3235–0065);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

(3) ''Form SB–2'' (OMB Control No. 3235–0418);

(4) ''Form S–4'' (OMB Control No. 3235–0324);

(5) ''Form F–4'' (OMB Control No. 3235–0325);

(6) ''Form 10'' (OMB Control No. 3235–0064);

(7) ''Form 10–SB'' (OMB Control No. 3235–0419);

(8) ''Form 20–F'' (OMB Control No. 3235–0288);

(9) ''Form 10–K'' (OMB Control No. 3235–0063);

(10) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(11) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A'' (OMB Control No. 3235–0059);

(12) ''Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)'' (OMB Control No. 3235–0057);

(13) ''Form 10–Q'' (OMB Control No. 3235–0070);

(14) ''Form 10–QSB'' (OMB Control No. 3235–0416);

(15) ''Regulation S–K'' (OMB Control No. 3235–0071); and

(16) ''Regulation S–B'' (OMB Control No. 3235–0417).

These regulations and forms were adopted pursuant to the Securities Act and the Exchange Act and set forth the disclosure requirements for annual and quarterly reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing, and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Under the proposals, we would require companies to include a discussion of the application of critical accounting policies in the MD&A section of annual reports, registration statements and proxy and information statements and make updates to some of that disclosure quarterly. We believe that the proposed MD&A disclosure would provide investors with a better understanding of management's application of accounting policies and how those accounting policies affect the financial statements. We believe this disclosure would increase transparency regarding financial disclosure. Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

We estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 781,911 hours and a cost of approximately $98,467,000.[140] We estimated the average number of hours each entity spends completing the form and the average hourly rate for outside professionals from discussions with persons regularly involved in completing the forms.[141]

B. Registration Statements

Table 1 below illustrates the total annual compliance burden of the proposed collection of information in hours and in cost for registration statements under the Securities Act and the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2001 fiscal year. We have estimated that, based on a three-year sample period, the average amount of time it would take to prepare the application of critical accounting policies disclosure for registration statements would be approximately 34 hours.

To determine the average total number of hours each entity spends completing each form, we added the estimated hour increment discussed below to the current burden hour estimate for each form reported to OMB. For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. The incremental cost of outside professionals for registration statements would be approximately $22,811,000 per year and the incremental company burden would be approximately 25,345 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for registration statements would be approximately $3,740,773,000 per year and the company burden would be approximately 4,156,415 hours per year.

To determine a new PRA burden per form that would accurately reflect the amount of respondents required to prepare the new disclosure, we adjusted the 34-hour incremental burden for some of the forms of registration statements. For the other registration statements in Table 1, we used the 34-

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[136] For more information on how to submit comments electronically, *see www.sec.gov/rules/submitcomments.htm.*

[137] While we are proposing amendments to Regulations S–B and S–K, the burden is imposed through the forms that refer to the disclosure regulations. To avoid a Paperwork Reduction Act inventory with duplicative burdens, we estimate the burdens imposed by Regulations S–B and S–K to be one hour.

[138] 44 U.S.C. 3501 *et seq.*

[139] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[140] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $1,000.

[141] In connection with this rulemaking, we have contacted a few companies to obtain cost estimates for preparing the proposed disclosure. Also, in connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

hour burden estimate. We adjusted the incremental burden to account for the fact that some registration statements allow incorporation by reference, and other forms would not require the company to substantially change a previously prepared MD&A.[142] We have adjusted the incremental burden for Forms S–1, F–1, S–4 and F–4 in recognition of the fact that many repeat issuers complete these forms.[143] A repeat issuer (who is already a reporting company) would not have to prepare an entirely new MD&A for each new registration statement because it would have already prepared MD&A for its periodic reports.

To account for this, we estimate that 40% of the Forms S–1, 65% of Forms F–1, 38% of Forms S–4 and 34% of Forms F–4 would be required to carry the full burden of preparing entirely new MD&A disclosure about the application of critical accounting policies.[144] To reflect the fact that the proposed disclosure would only be prepared anew for a subset of the total forms filed, yet the collection burden is calculated and submitted to OMB for 100% of the forms filed, we reduced the incremental burden hours for the above forms by the percentage of respondents who would not be required to carry the full burden of preparing new disclosure about the application of critical accounting policies. Therefore, we estimate that the average annual incremental burden for all Forms S–1 would be 14 hours per form, which is approximately 40% of the 34-hour burden estimate for preparing the disclosure. We estimate that the average annual incremental burden for all Forms F–1 would be 22 hours per form, which is approximately 65% of the 34-hour burden estimate for preparing the disclosure. We estimate that the average annual incremental burden for all Forms S–4 would be 13 hours per form, which is approximately 38% of the 34-hour burden estimate for preparing the disclosure. Finally, we estimate that the average annual incremental burden for all Forms F–4 would be 12 hours per form, which is 34% of the 34-hour burden estimate for preparing the disclosure.

TABLE 1.—REGISTRATION STATEMENTS

[Columns in bold are the PRA burdens submitted to OMB]

	Annual responses	Total hours/form	Total burden	**25% Company**	75% Professional	**$300 Prof. cost**
	(A)	(B)	(C)=(A)*(B)	**(D)=(C)*0.25**	(E)=(C)*0.75	**(F)=(E)*$300**
S–1	452	1,742	787,384	**196,846**	590,538	**$177,161,000**
F–1	48	1,905	91,440	**22,860**	68,580	**20,574,000**
SB–2	698	582	406,236	**101,559**	304,677	**91,403,000**
S–4	3,774	3,973	14,994,102	**3,748,526**	11,245,577	**3,373,673,000**
F–4	211	1,323	279,153	**69,788**	209,365	**62,810,000**
Form 10	91	126	11,466	**2,867**	8,600	**2,580,000**
10–SB	458	122	55,876	**13,969**	41,907	**12,572,000**
Total			16,625,657	**4,156,415**		**3,740,773,000**

C. Annual Reports and Proxy/Information Statements

Table 2 below illustrates the total annual compliance burden of the collection of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2001 fiscal year. We have estimated that, based on a three-year sample period, the average amount of time it would take to prepare disclosure about the application of critical accounting policies for annual reports and proxy and information statements would be approximately 29 hours.

To determine the average total number of hours each entity spends completing each form, we added the 29-hour increment to the current burden hours estimated for each form. For Exchange Act reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[145] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. The incremental cost of outside professionals for annual reports and proxy/information statements would be approximately $32,508,000 per year and the incremental company burden would be approximately 325,083 hours per year. For purposes of our submission to OMB under the PRA the total cost of outside professionals for annual reports and proxy/information statements would be approximately $1,738,387,000 per year and the company burden would be approximately 17,383,796 hours per year.

To determine the average total number of hours each entity spends completing each form, we added the estimated hour increment discussed above to the current burden hour estimate for each form reported to OMB. We made one exception, however, with respect to Schedules 14A and 14C. Those schedules only require MD&A in three situations: (1) The modification of any class of securities of the company; (2) the issuance or authorization for issuance of securities of the company; or (3) mergers, consolidations, acquisitions and similar matters.[146] In addition, many of these Schedules are filed by reporting companies. Because in many

[142] We have not included registration statements where a registrant fulfills its MD&A disclosure obligation entirely through incorporation by reference (such as Forms S–3 and S–2).

[143] In addition, Forms S–4 and F–4 allow for incorporation by reference when the issuer would be eligible.

[144] We derived these percentages from the proportion of new issuers to total issuers derived from our internal database.

[145] This allocation of the burden is a departure from our past PRA submissions for Exchange Act periodic reports and proxy and information statements, for which we estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that this new allocation more accurately reflects current practice for annual and quarterly reports and proxy and information statements.

[146] *See* Items 11, 12 and 14 of Schedule 14A, 17 CFR 240.14a–101.

instances reporting companies would have previously prepared MD&A for their periodic reports, we estimate that 5% of Schedules 14A and 14C would require a company to prepare an entirely new MD&A.[147] To reflect the fact that only the above percentage would require new disclosure, yet the collection burden is calculated and submitted to OMB for 100% of the Schedules filed, we reduced the incremental burden hours for Schedules 14A and 14C by the percentage of respondents who would not be required to carry the full burden of preparing new disclosure about the application of critical accounting policies. Therefore, we estimate that the average annual incremental burden for these forms would be approximately 2 hours, which is approximately 5% of the 34-hour burden estimate for registration statements.

TABLE 2.—ANNUAL REPORTS AND PROXY/INFORMATION STATEMENTS

[Columns in bold are the PRA burdens submitted to OMB]

	Annual responses	Total hours/form	Total burden	**75% Company**	25% Professional	**$300 Prof. Cost**
	(A)	(B)	(C)=(A)*(B)	**(D)=(C)*0.75**	(E)=(C)*0.25	**(F)=(E)*$300**
20–F	1,177	1,752	2,062,104	**1,546,578**	515,526	**$154,658,000**
10–K	9,384	1,749	16,412,616	**12,309,462**	4,103,154	**1,230,946,000**
10–KSB	3,789	1,205	4,565,745	**3,424,309**	1,141,436	**342,431,000**
SCH 14A	8,239	16	131,824	**98,868**	32,956	**9,887,000**
SCH 14C	407	15	6,105	**4,579**	1,526	**458,000**
Total			23,178,394	**17,383,796**		**1,738,380,000**

D. Quarterly Reports

Table 3 below illustrates the total annual compliance burden of the collection of information in hours and in cost for quarterly reports under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2001 fiscal year. We have estimated that, based on a three-year sample period, the average amount of time it would take each year to add the new disclosures would be 15 hours per form for each company.[148]

To determine the average total number of hours each entity spends completing each form, we added the 15-hour increment to the current burden hours for each form. For quarterly reports, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. Additionally, there would be no change to the estimated burden of the collection of information entitled ''Regulation S–B'' and ''Regulation S–K'' because the burdens are already reflected in our estimates for the forms. The incremental cost of outside professionals for quarterly reports would be approximately $43,148,000 per year and the incremental company burden would be approximately 431,483 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for quarterly reports and Regulation S–K and S–B would be approximately $427,395,000 per year and the company burden would be 4,273,945 hours per year.

TABLE 3.—QUARTERLY REPORTS AND REGULATIONS S–K AND S–B

[Columns in bold are the PRA burdens submitted to OMB]

	Annual responses	Total hours/form	Total burden	**75% Company**	25% Professional	**$300 Prof. Cost**
	(A)	(B)	(C)=(A)*(B)	**(D)=(C)*0.75**	(E)=(C)*0.25	**(F)=(E)*$300**
10–Q	26,746	151	4,038,646	**3,028,985**	1,009,662	**$302,899,000**
10–QSB	11,608	143	1,659,944	**1,244,958**	414,986	**124,496,000**
Regulation S–K	0	1	1	**1**	0	**0**
Regulation S–B	0	1	1	**1**	0	**0**
Total				**4,273,945**		**427,395,000**

E. Solicitation of Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection

[147] That percentage is our best estimate based on our belief that the percentage of companies that file Schedules 14A and 14C that would actually be required to carry the full burden of preparing the proposed disclosure would be minimal.

[148] That estimate assumes that all U.S. reporting companies would have material updates to disclosure about critical accounting estimates in each quarter.

techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–16–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

The Commission is proposing disclosure rules to address investors' increasing demand for greater transparency with respect to the application of companies' accounting policies and their effects. The proposed disclosure about the application of critical accounting policies encompasses a company's critical accounting estimates and its initial adoption of accounting policies that have a material impact. While the existing disclosure requirements in GAAP result in some basic disclosure of a company's material changes in accounting estimates, initial adoption of accounting policies and risks and uncertainties that may materially affect the financial statements, the proposals would require companies to provide more comprehensive information and analysis about a company's application of critical accounting policies. Because of the potential impact of a company's critical accounting policies and the subjectivity and complexity involved, they are important for investors' understanding of a company's overall financial condition, changes in financial condition and results of operations. The proposals would require companies that are reporting, raising capital in the registered public markets or asking shareholders for their votes to identify their critical accounting estimates and their initial adoption of material accounting policies. For those applications, a company would provide a meaningful analysis of their impact in the ''Management's Discussion and Analysis'' section of the disclosure documents.

B. Objectives of Proposed Disclosure of Critical Accounting Estimates

Beyond the disclosure of the application of accounting policies provided for in the accounting literature, our proposals would provide additional key information in MD&A that enhances understanding of a company's financial statements, and provides information about the quality of, and potential variability of, a company's earnings. Our proposals would give management the impetus to discuss candidly, and provide insight into, the company's critical accounting estimates and its initial adoption of accounting policies that have a material impact. Our proposals are expected to increase investor understanding, to enhance the ability of investors to make informed investment decisions and to allocate capital on a more efficient basis.

C. Alternative Regulatory Approaches

We considered alternative regulatory actions for achieving the proposed disclosure and greater transparency of a company's application of critical accounting policies. We considered encouraging companies to provide disclosure regarding the application of critical accounting policies.[149] Although some public companies are voluntarily providing more detailed information in their financial statements, it has been noted that some companies generally have not been providing investors with the desired level of detail in their disclosure. To stimulate higher quality disclosures regarding the application of critical accounting policies, we are proposing mandated disclosures.

The proposed mandated disclosures are likely to result in a more focused and descriptive discussion of the company's critical accounting estimates and initial adoption of accounting policies that have a material impact. In addition, mandated disclosures regarding the application of critical accounting policies should benefit investors because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time.[150]

In addition to voluntary disclosure, we considered various methods of mandating this disclosure to the public. We are proposing what we believe to be the least onerous method that retains the primary benefit of increased transparency. One alternative approach we considered was to change accounting rules regarding the presentation of financial statements to require more disclosure in the financial statements with respect to the application of critical accounting policies. Another approach we considered was to require companies to file schedules of all accounting estimates as exhibits to their quarterly and annual filings. These schedules would contain a demonstration of how a company calculated each estimate.

Unlike these alternative approaches, we believe that the placement of the proposed disclosure in the MD&A would encourage management to provide more insightful disclosure in a manner more understandable to the average investor than these other disclosure alternatives.

We solicit comment with respect to alternative regulatory approaches.

- Is there evidence that market forces would elicit the disclosures we are proposing?[151]
- What are the relative costs and benefits of pursuing these or other alternative regulatory solutions to elicit disclosure of the application of critical accounting policies?

D. Potential Benefits of the Proposed Rules

The primary anticipated benefit of the proposed rules is to increase transparency of the financial condition, changes in financial condition and operating results of companies and to reduce the information asymmetry between management and investors. Current market events have evidenced a need to provide investors with a clearer understanding of where a company's accounting policies, estimates, assumptions and methodologies materially affect the financial statements

[149] *See* Securities Act Release No. 8040, FR–60 (Dec. 12, 2001) [66 FR 65013]. *See also* Securities Act Release No. 8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[150] *See generally,* Kothari, S., *Capital Markets Research In Accounting,* 31 Journal of Accounting and Economics 105 (2001). This author suggests that mandated disclosures provide useful information to markets reducing information processing costs for investors by providing for consistent, comparable disclosures.

[151] *See generally,* Healy, P. and K. Palepu, *Information Asymmetry, Corporate Disclosure And Capital Markets: A Review Of The Empirical Disclosure Literature,* 31 Journal of Accounting and Economics 405 (2001). The authors argue that one reason why firms are reluctant to disclose voluntarily is that they face significant proprietary and litigation costs.

when they are prepared.[152] The proposed disclosure is intended to enhance the quality of the disclosure in the MD&A section by providing more information about management's insight into the company. By making information about the application of critical accounting policies and their implications on the presentation of the company's financial position available and more understandable, the proposals would benefit investors both directly and indirectly through the financial analysts and the credit rating agencies whose analyses investors consider. Greater transparency would thus enable investors to make more informed investment decisions and to allocate capital on a more efficient basis.

As a secondary benefit to investors, a possible by-product of the proposed MD&A disclosure may be to deter improper accounting practices by some companies. For example, the proposed disclosure of critical accounting estimates could make inappropriate earnings management more difficult because it could be easier to detect. The proposed disclosure could also assist investors in evaluating management's performance. With the proposed disclosure, an investor may be better able to judge whether management applies the company's accounting policies either aggressively or conservatively.

Another possible beneficial by-product of the proposed MD&A disclosure could be to increase the discipline and oversight of management in their application of a company's critical accounting policies. In order to prepare the disclosure, management would be required to review and explain the company's application of accounting policies, and the reasonably likely impact. The proposed disclosure could increase management's motivation to exercise greater discipline in applying the company's accounting policies because the material assumptions and methodologies would be more transparent and subject to greater investor scrutiny. In light of this possibility, both auditors and audit committees may also improve their oversight of the application of critical accounting policies.

We solicit comment with respect to the potential benefits of the proposed MD&A disclosure.

- We solicit quantitative data to assist our assessment of the benefits of identifying critical accounting estimates and analyzing their effects on the financial statements and explaining the initial adoption of material accounting policies and their impacts in the manner proposed.
- Would the proposed disclosure serve as a deterrent for improper accounting practices?

E. Potential Costs of Proposed Rules

1. Costs of Preparing Disclosure

We estimate that proposed rules would impose a new disclosure requirement on approximately 14,000 public companies.[153] We anticipate that the average company's application of critical accounting policies disclosure would consist of about six pages of additional text when the company is required to prepare the proposed disclosure in its entirety. We estimate that the disclosure would involve multiple parties, including in-house preparers, senior management, in-house counsel, outside counsel, outside auditors, and audit committee members. For purposes of the Paperwork Reduction Act,[154] we estimated that company personnel would spend approximately 780,000 hours per year (56 hours per company) to prepare, review and file the proposed disclosure. Based on our estimated cost of in-house staff time, we estimated the PRA hour-burden would translate into an approximate cost of $98,000,000 ($7,000 per company).[155] We also estimated that companies would spend approximately $98,000,000 ($7000 per company) on outside professionals to comply with the disclosure.[156] We also estimate that companies will incur some additional printing and dissemination costs.[157] We are unable to estimate the potential printing and dissemination costs because there is a wide possible range of paper and ink available and different companies will print a different number of reports depending on their shareholder base.

While companies may face increased costs associated with the preparation, review, filing, printing and dissemination of these disclosures, we believe our proposals would not substantially increase the costs to collect the information necessary to prepare the proposed disclosure. This information should largely be readily available from each company's books and records. Since management must calculate accounting estimates and apply initially adopted accounting policies to prepare the required financial statements, the proposed disclosure may not impose significant incremental costs for the collection and calculation of data. In addition, management is likely to already conduct analysis of the application of the company's accounting policies in the course of managing the business activities of the company. We recognize that management does not currently describe its analysis and is likely to confer with legal counsel in drafting the disclosure. Because of the wide variance among public companies, it is difficult to estimate the average cost. We did contact a few companies that voluntarily had provided information about critical accounting policies in their 2001 Form 10-Ks. They indicated that preparation of the proposed disclosure would cost from approximately $5,000 to $500,000 per year.

We solicit comment regarding the potential cost of compliance with the proposals.

- What types of expenses would companies incur in order to comply with the proposed disclosure requirements?
- What would the average printing and dissemination costs be for each firm?
- We solicit quantitative data to assist our assessment of the compliance costs of identifying critical accounting estimates and the initial adoption of accounting policies that have a material impact and analyzing their effects on the financial statements in the manner proposed.

2. Competitive Harm

There is some possibility that a company's competitors could be able to infer proprietary or sensitive information from disclosure about management's application of critical accounting policies under our proposals. To the extent that all companies make the proposed disclosure, that impact may diminish.

We solicit comment regarding possible competitive harm.

- To what degree would our proposed disclosure requirements create competitively harmful effects upon public companies?

[152] *See generally,* Marcia Vickers, Mike McNamee et. al, *The Betrayed Investor*, BusinessWeek, Feb. 25, 2002 at 105.

[153] We derived this estimate by assessing the number of registrants who filed annual reports last year, and subtracting an estimated number of small business issuers who we expect would not be required to provide the disclosure.

[154] 44 U.S.C. § 3501 *et seq.*

[155] This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[156] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

[157] *See generally,* Del Jones, *Companies Beef up their Annual Reports*, USA Today, Mar. 12, 2002 at 1B.

• How could we minimize those effects?

3. Perception of Increased Liability

With any new disclosure mandate, there may be an increased chance that a company could include a materially misleading statement or a material omission in its disclosure document. A company may be concerned that it could be subjected to increased liability due to the disclosure required by the proposed rules. For example, one aspect of our proposed rules would require a quantitative and qualitative analysis to depict the effects of changing a critical accounting estimate. Companies may believe that this disclosure would subject them to potential liability if actual changes to the critical accounting estimates affect line items and overall financial performance to a greater or lesser degree than disclosed. Companies may particularly be concerned with the potential liability when required disclosure is forward-looking in nature.

In part to help alleviate this perception, we are proposing the new disclosure be included in the MD&A section—a section *not* excluded from the coverage of the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act of 1995.[158] Those safe harbors were designed to help companies reduce the costs of litigation relating to those types of statements. The PSLRA safe harbors, as well as those provided by existing Commission Rules 175 and 3b–6 and the ''bespeaks caution'' legal doctrine created by the courts, should reduce potential litigation costs of companies that craft the disclosure under the proposed rules to meet the conditions of those safe harbors and that doctrine.

We are soliciting comment with regard to the perception of increased liability.

• What are the potential litigation and liability costs that would be associated with the proposed disclosure requirements?

F. Small Business Issuers

We have proposed to require that those small business issuers that must currently make MD&A disclosure also must provide disclosure about the application of critical accounting policies. Small business issuers that are not currently required to prepare MD&A would not be subject to the proposed MD&A disclosure. Thus, only small business issuers that have generated revenues in the past two years would be required to disclose the proposed information about their application of critical accounting policies. The proposals would not impose additional costs for start-up and early stage businesses at a time when they need their resources for growth. We believe the burden on small firms may be less significant overall because these firms would be likely to have fewer critical accounting estimates. We do not have specific data, however, with respect to that assumption.

We ask commenters to provide us with data to estimate the costs of the proposed regulations for small business issuers.

• Would small business issuers on average have fewer critical accounting estimates to discuss?

• Who would prepare the disclosure for small business issuers?

• What types of expenses would be incurred to prepare this disclosure?

G. Foreign Private Issuers

We propose to apply to foreign private issuers the same MD&A disclosure requirements regarding the application of critical accounting policies that would apply to U.S. companies. Foreign private issuers, however, may present their financial statements either in accordance with U.S. GAAP, in accordance with GAAP of a foreign country, or in accordance with International Accounting Standards and International Financial Reporting Standards issued by the International Accounting Standards Committee and the International Accounting Standards Board. If financial statements are presented in accordance with non-U.S. GAAP, a reconciliation to U.S. GAAP accompanies them. If the primary financial statements were in non-U.S. GAAP, the company would have to consider the application of critical accounting policies in connection with both its primary financial statements and its reconciliation to U.S. GAAP. Therefore, foreign private issuers may incur additional costs with regard to the proposed disclosure because of possible additional disclosure regarding the reconciliation to U.S. GAAP.

Offsetting this additional cost, however, is the fact that foreign private issuers would not be required to submit quarterly reports on Form 10–Q or Form 10–QSB to the Commission. In addition, foreign private issuers are exempt from U.S. proxy and information statement disclosure requirements.[159] Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it generally would not be required to update the proposed MD&A disclosure more frequently than annually. Therefore, the overall cost of compliance could be lower for foreign private issuers than for U.S. companies.

We ask commenters to provide us with data to estimate the costs of the proposed regulations for foreign private issuers.

• On average, would the U.S. GAAP reconciliation cause foreign private issuers to have more critical accounting estimates and more initial adoptions of accounting policies to discuss than a U.S. company? If so, how many more?

H. Request for Comments

To assist the Commission in its evaluation of the costs and benefits of the proposed disclosure discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules.

VII. Effects on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[160] requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects. The proposed rules are intended to make information about the application of critical accounting policies and their implications for the presentation of a company's financial condition, changes in financial condition and operating results more understandable to investors. We have identified one possible area where the proposed rules could potentially place a burden on competition. In our cost-benefit analysis above, we note that there is some possibility that a company's competitors could be able to infer proprietary or sensitive information from disclosure about management's application of critical accounting policies under our proposals. To the extent that all companies make the proposed disclosure, that impact may diminish. In our cost-benefit analysis above, we request comment regarding the degree to which our proposed disclosure requirements would create competitively harmful effects upon public companies, and how to minimize those effects. We request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects.

Section 2(b) of the Securities Act[161] and Section 3(f) of the Exchange Act[162]

[158] Pub. L. No. 104–67, 109 Stat. 737 (1995).

[159] *See* 17 CFR 240.3a12–3(b).

[160] 15 U.S.C. § 78w(a)(2).

[161] 15 U.S.C. 77b(b).

[162] 15 U.S.C. 78c(f).

require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe the proposed disclosure may promote market efficiency by making information about the application of critical accounting policies, and their impact on the presentation of the company's financial position, more understandable. As a result, we believe that investors may be able to make more informed investment decisions and capital may be allocated on a more efficient basis. In addition, we believe this disclosure would assist investors in evaluating management. The possibility of these effects, their magnitude if they were to occur and the extent to which they would be offset by the costs of the proposals are difficult to quantify. We request comment on these matters and how the proposed amendments, if adopted, would affect efficiency and capital formation. Commenters are requested to provide empirical data and other factual support to the extent possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Item 303 of Regulation S–K,[163] Item 303 of Regulation S–B [164] and Item 5 of Form 20–F.[165] The proposals require a company to discuss the application of critical accounting policies. The new disclosure would be included in the MD&A section of a company's annual reports, registration statements and proxy and information statements. Companies would be required to update the portion of the proposed MD&A information about critical accounting estimates by disclosing material changes quarterly on Form 10–Q or Form 10–QSB.

A. Reasons for the Proposed Action

The requirements of GAAP for disclosure in financial statements and the current requirements in MD&A have not resulted in the type of discussion of the application of critical accounting policies that our proposals would require. The potential consequences of not taking this action to require disclosure regarding the application of critical accounting policies are: (a) Less transparency in the presentation of companies' financial statements and, correspondingly, a lesser understanding of companies' financial condition, changes in financial condition and results of operations when making investment decisions; and (b) a potential decrease in investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

B. Objectives

Beyond the disclosure of the application of accounting policies provided for in the accounting literature, our proposals would provide additional key information in MD&A that enhances understanding of a company's financial statements, and provides information about the quality of, and potential variability of, a company's earnings. Our proposals would give management the impetus to discuss candidly, and provide insight into, the company's application of critical accounting policies. We believe that our proposals may increase investor understanding, enhance the ability of investors to make informed investment decisions and allocate capital on a more efficient basis.

C. Legal Basis

We are proposing the amendments under the authority set forth in Sections 7, 10 and 19 of Securities Act of 1933 and Sections 12, 13, 14 and 23 of the Securities Exchange Act of 1934.

D. Small Entities Subject to the Proposed Regulation and Rules

The proposals would affect companies that are small entities. Exchange Act Rule 0–10(a) [166] and Securities Act Rule 157 [167] define a company, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of February 20, 2002, we estimated that there were approximately 2,500 companies, other than investment companies, that may be considered small entities. The proposed disclosure requirements would apply to any small entity that fulfills its disclosure obligations by either complying with our standard disclosure requirements [168] or providing the ''Management's Discussion and Analysis'' disclosure item contained in our optional disclosure system available only to small businesses.[169] If a small entity elects to fulfill its disclosure obligations pursuant to our optional disclosure system for small businesses, it would be required to comply with our proposed rule only if it had revenues during the past two fiscal years. While we believe that there are a number of small entities that therefore would not be required to comply with our proposals, we are unable to quantify that number. We request comment on the number of small entities that would not be required to comply with our proposals.

E. Reporting, Recordkeeping and Other Compliance Requirements

Small entities would either utilize existing personnel or hire an outside professional to provide the proposed disclosure. This would impose incremental costs on small entities in connection with drafting, reviewing, filing, printing and disseminating additional disclosure in annual reports, registration statements, proxy and information statements and quarterly reports. The data underlying the proposed disclosure should be readily available from a company's books and records. Thus, the proposed rules involve relatively low incremental costs for the collection and calculation of data. This belief is based on the fact that management already must calculate the critical accounting estimates and apply initially adopted accounting policies to prepare the required financial statements. In addition, the burden on small entities of disclosing the effects of those estimates and changes in them may be less because it is possible that these firms may have fewer critical accounting estimates that would be covered by the proposals.

The proposed rule was designed to reduce costs for small entities by requiring the proposed disclosure only in the event that a small business issuer has generated revenue in the past two years. Our proposals thus would avoid applying the new requirements for MD&A disclosure relating to the application of critical accounting policies to start-up or developing companies that need not provide MD&A disclosure otherwise. Those companies describe a business plan rather than the traditional MD&A. In addition, small business issuers that provide the critical accounting estimates disclosure would only be required to provide a quantitative discussion of past material changes in estimates for the last two fiscal years. This corresponds to the income statements required to be included in our small business forms.

[163] 17 CFR 229.303.

[164] 17 CFR 228.303.

[165] 17 CFR 249.220f.

[166] 17 CFR 270.0–10(a).

[167] 17 CFR 230.157.

[168] Regulation S–K, 17 CFR 229.10–229.1016.

[169] Regulation S–B, 17 CFR 228.10–228.701.

Other companies would be required to discuss this information for the past three years.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed rules. There is a possible partial overlap with financial statement requirements requiring disclosure about material changes in critical accounting estimates and risks and uncertainties that could materially affect the financial statements and with MD&A requirements that may require some discussion of the application of critical accounting policies if that is essential to an understanding of a company's financial condition, changes in financial condition or results of operations. However, those requirements do not include much of the information specifically targeted for inclusion in the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure related to critical accounting estimates for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

We have drafted the proposed disclosure rules to require clear and straightforward disclosure in MD&A. Separate disclosure requirements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements for small entities involving clarification, consolidation or simplification of the proposed disclosure.

We have used design rather than performance standards in connection with the proposals for three reasons. First, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements. The proposed mandated disclosures may be likely to result in a more focused and comprehensive discussion of the company's application of its critical accounting policies. Second, mandated disclosures regarding the application of critical accounting policies may benefit investors in small entities because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time. Third, a mandated discussion of a company's application of critical accounting policies is uniquely suited to the MD&A disclosure in light of MD&A's emphasis on the identification of significant uncertainties and events and favorable or unfavorable trends. Therefore, adding a disclosure requirement to the existing MD&A appears to be the most effective method of eliciting the disclosure.

As noted above, we have proposed not to cover small business issuers that have not generated revenue during the last two years. We have made this accommodation in recognition of the fact that a limited modified approach is consistent with the objectives underlying the small business issuer disclosure system's alteration of the MD&A requirements for these companies and reduction of compliance burdens for these small companies. We believe that exempting small entities further from coverage of the proposals would not be appropriate. Investors in smaller companies may want and benefit from the disclosures about the application of critical accounting policies just as much as investors in larger companies. We note that a study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission found that the incidence of financial fraud was greater at small companies.[170] Accordingly, a possible secondary benefit to investors in small entities may be to deter improper accounting practices. For example, the proposed disclosure could make inappropriate earnings management more difficult because it could be easier to detect.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[171] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We preliminarily believe that our proposals could constitute a ''major rule'' under SBREFA. We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

X. Codification Update

The Commission proposes to amend the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982):

By adding Section 501.12, captioned ''The Application of Critical Accounting Policies,'' to include the text in the adopting release that discusses the final rules, which, if the proposed rules are adopted, would be substantially similar to Section III of this release. The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

Statutory Bases and Text of Proposed Amendments

We are proposing amendments to Commission's existing rules under the authority set forth in Sections 7, 10 and 19 of the Securities Act and Sections 12, 13, 14 and 23 of the Exchange Act.

[170] *See* Beasley, Carcello and Hermanson, Fraudulent Financial Reporting: 1987–1997, and Analysis of U.S. Public Companies (Mar. 1999).

[171] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

List of Subjects 17 CFR Parts 228, 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

2. Section 228.303 is amended by adding paragraph (b)(3) and Instructions to paragraph (b)(3) and revising Instruction 2 of Instructions to Item 303 to read as follows:

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

* * * * *

(b) * * *

(3) *The application of critical accounting policies.*

(i) *Annual reports, registration statements and proxy and information statements.* In an annual report filed under the Exchange Act, an annual report to shareholders prepared under § 240.14a–3 or § 240.14c–3 of this chapter, a registration statement filed under the Securities Act or the Exchange Act, or a proxy or information statement filed under the Exchange Act, include a separately-captioned section in ''Management's Discussion and Analysis'' setting forth the disclosure regarding the small business issuer's application of critical accounting policies required by paragraphs (b)(3)(iii) and (b)(3)(iv) of this section. Except as otherwise stated, the discussion must cover the financial statements for the most recent fiscal year and any subsequent period for which interim period financial statements are required to be included.

(ii) *Definitions.*

(A) *Accounting estimate.* As used in paragraph (b)(3) of this section, the term *accounting estimate* means an approximation made by management of a financial statement element, item or account in the financial statements.

(B) *Critical accounting estimate.* An accounting estimate recognized in the financial statements presented is a *critical accounting estimate* for purposes of this section if:

(*1*) The accounting estimate requires the small business issuer to make assumptions about matters that are highly uncertain at the time the accounting estimate is made; and

(*2*) Different estimates that the small business issuer reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the small business issuer's financial condition, changes in financial condition or results of operations.

(C) *Near-term.* As used in paragraph (b)(3) of this section, the term *near-term* means a period of time going forward up to one year from the date of the financial statements.

(D) *Reasonably possible.* As used in paragraph (b)(3) of this section, the term *reasonably possible* means the chance of a future transaction or event occurring is more than remote but less than likely.

(iii) *Disclosure regarding critical accounting estimates.* For each critical accounting estimate:

(A) Identify and describe the accounting estimate. Describe the methodology underlying the accounting estimate. Describe the assumptions underlying the accounting estimate that relate to matters highly uncertain at the time the estimate was made. Describe any other underlying assumptions that are material. Discuss any known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the methodology or assumptions described. Disclose, if applicable, why different estimates that would have had a material impact on the small business issuer's financial presentation could have been used in the current period. Describe, if applicable, why the accounting estimate is reasonably likely to change from period to period with a material impact on the financial presentation;

(B) Explain the significance of the accounting estimate to the small business issuer's financial condition, changes in financial condition and results of operations and, where material, identify the line items in the financial statements affected by the accounting estimate;

(C)(*1*) Present either:

(*i*) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that reasonably possible near-term changes occur, both negative and positive (where applicable), in the most material assumption or assumptions underlying the accounting estimate; or

(*ii*) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that the accounting estimate was changed to the upper end and the lower end of the range of reasonable possibilities determined by the small business issuer in the course of formulating its recorded estimate; and

(*2*) Discuss the impact, if material, on the small business issuer's liquidity or capital resources if any of the changes being assumed for purposes of satisfying paragraph (b)(3)(iii)(C)(*1*)(*i*) or paragraph (b)(3)(iii)(C)(*1*)(*ii*) of this section were in effect;

(D) Present a quantitative and qualitative discussion of any material changes made to the accounting estimate in the past two years (or in the past year for any filing made before [one year after the effective date of the final rule]), describe the reasons for the changes and discuss the effect on line items in the financial statements and overall financial performance;

(E) Disclose whether or not the small business issuer's senior management has discussed the development and selection of the critical accounting estimates, and the MD&A disclosure regarding them, with the audit committee of the small business issuer's board of directors (or the equivalent oversight group). If the senior management has not had these discussions, disclose the reasons why not; and

(F) If the small business issuer operates in more than one segment, identify the segments that the accounting estimate affects. To the extent that the disclosure under the requirements of paragraph (b)(3) of this section only on a company-wide basis would result in an omission that renders the disclosure materially misleading, include a separate discussion on a segment basis for the identified segments of the small business issuer's business about which disclosure is otherwise required.

(iv) *Disclosure regarding initial adoption of an accounting policy.* If an accounting policy initially adopted by the small business issuer (other than those solely resulting from the adoption of new accounting literature issued by a recognized accounting standard setter) had a material impact on its financial condition, changes in financial condition or results of operations, disclose:

(A) The events or transactions that gave rise to the initial adoption;

(B) The accounting principle that has been adopted and the method of applying that principle;

(C) The impact, qualitatively, of the initial adoption on the financial condition, changes in financial condition and results of operations of the small business issuer;

(D) If the small business issuer is permitted a choice between acceptable accounting principles, an explanation it made such a choice, what the alternatives were, and why it made the choice that it did (including, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that alternatives would have had); and

(E) If no accounting literature exists that governs the accounting for the events or transactions giving rise to the initial adoption, an explanation of the small business issuer's decision regarding which accounting principle to use and which method of applying that principle to use.

(v) *Quarterly reports.* In a quarterly report on Form 10–QSB (§ 249.308b of this chapter), in a separately-captioned section of ''Management's Discussion and Analysis,'' disclose:

(A) For any critical accounting estimate that was not previously discussed as a critical accounting estimate in the MD&A section of the small business issuer's last Form 10–KSB (§ 249.310b of this chapter) or any of its subsequent Forms 10–QSB, the information required by paragraph (b)(3)(iii) of this section; and

(B) For any critical accounting estimate previously discussed as a critical accounting estimate in the MD&A section of the small business issuer's last Form 10–KSB or any of its subsequent Forms 10–QSB, any material change to that prior disclosure (other than disclosure under paragraph (b)(3)(iii)(D) of this section) necessary to make that disclosure not materially misleading as of the time the small business issuer files its Form 10–QSB for the current fiscal quarter.

Instructions to paragraph (b)(3):

1. The changes being assumed in connection with paragraph (b)(3)(iii)(C)(*1*) of this section must be meaningful and therefore may not be so minute as to avoid, or materially understate, any demonstration of sensitivity.

2. For purposes of paragraph (b)(3)(v) of this section, the small business issuer preparing the disclosure required by this paragraph may presume that investors have read or have access to the discussion of critical accounting estimates in its most recently filed Form 10–KSB and any of its subsequent Forms 10–QSB.

3. All information provided under paragraph (b)(3) of this section must be presented in clear, concise format and language that is understandable to the average investor. The information provided in this section must not be presented, for example: only as a general discussion of multiple critical accounting estimates in the aggregate or of multiple new accounting policies in the aggregate; as boilerplate disclosures that do not specifically address the small business issuer's particular circumstances and operations; as lists of accounting estimates relating to each material line item in the small business issuer's financial statements; or as disclosures that consist principally of disclaimers of legal liability for the small business issuer's preparation of critical accounting estimates or initial application of an accounting policy.

4. Refer to the Commission's release number 33–_____ dated_____, 200__ (adopting paragraph (b)(3) of this section) for guidance in preparing the disclosure relating to critical accounting estimates in this MD&A.

Instructions to Item 303

* * * * *

2. Your response to this Item requires you to make certain forward-looking statements. Examples include, but are not limited to: a small business issuer's disclosure of the reasonably possible, near-term changes in assumptions underlying accounting estimates; a discussion of the assumptions underlying an estimate that involve, for example, projections of future sales; and a discussion of the expected effect if a known uncertainty were to come to fruition and result in a change in management's assumptions. If the terms and conditions of Section 27A of the Securities Act (15 U.S.C. 77z–2), Section 21E of the Exchange Act (15 U.S.C. 78u–5), § 230.175 of this chapter or § 249.3b–6 of this chapter are satisfied, forward-looking statements would be entitled to the safe harbor protection. Small business issuers are encouraged to consider the terms, conditions and scope of those safe harbors when drafting disclosure, particularly when preparing disclosure under the provisions of paragraph (b)(3) of this section.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

* * * * *

4. Section 229.303 is amended by:

a. Removing the authority citation following § 229.303;

b. Removing Instruction 7 of ''Instructions to Paragraph 303(a)'' and Instruction 6 of ''Instructions to Paragraph (b) of Item 303;''

c. Redesignating Instructions 8 through 12 of ''Instructions to Paragraph 303(a)'' as Instructions 7 through 11; and

d. Adding paragraph (c).

The addition reads as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

* * * * *

(c) *The application of critical accounting policies.*

(1) *Annual reports, registration statements and proxy and information statements.* In an annual report filed under the Exchange Act, an annual report to shareholders prepared under § 240.14a–3 or § 240.14c–3 of this chapter, a registration statement filed under the Securities Act or the Exchange Act, or a proxy or information statement filed under the Exchange Act, include a separately-captioned section in ''Management's Discussion and Analysis of Financial Condition and Results of Operations'' setting forth the disclosure regarding the registrant's application of critical accounting policies required by paragraphs (c)(3) and (c)(4) of this section. Except as otherwise stated, the discussion must cover the financial statements for the most recent fiscal year and any subsequent period for which interim period financial statements are required to be included.

(2) *Definitions.*

(i) *Accounting estimate.* As used in paragraph (c) of this section, the term *accounting estimate* means an approximation made by management of a financial statement element, item or account in the financial statements.

(ii) *Critical accounting estimate.* An accounting estimate recognized in the financial statements presented is a *critical accounting estimate* for purposes of this section if:

(A) The accounting estimate requires the registrant to make assumptions about matters that are highly uncertain at the time the accounting estimate is made; and

(B) Different estimates that the registrant reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the registrant's financial condition, changes in financial condition or results of operations.

(iii) *Near-term.* As used in paragraph (c) of this section, the term *near-term* means a period of time going forward up to one year from the date of the financial statements.

(iv) *Reasonably possible.* As used in paragraph (c) of this section, the term *reasonably possible* means the chance of a future transaction or event occurring is more than remote but less than likely.

(3) *Disclosure regarding critical accounting estimates.* For each critical accounting estimate:

(i) Identify and describe the accounting estimate. Describe the methodology underlying the accounting estimate. Describe the assumptions underlying the accounting estimate that relate to matters highly uncertain at the time the estimate was made. Describe any other underlying assumptions that are material. Discuss any known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the methodology or assumptions described. Disclose, if applicable, why different estimates that would have had a material impact on the registrant's financial presentation could have been used in the current period. Describe, if applicable, why the accounting estimate is reasonably likely to change from period to period with a material impact on the financial presentation;

(ii) Explain the significance of the accounting estimate to the registrant's financial condition, changes in financial condition and results of operations and, where material, identify the line items in the financial statements affected by the accounting estimate;

(iii)(A) Present either:

(*1*) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that reasonably possible near-term changes occur, both negative and positive (where applicable), in the most material assumption or assumptions underlying the accounting estimate; or

(*2*) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that the accounting estimate was changed to the upper end and the lower end of the range of reasonable possibilities determined by the registrant in the course of formulating its recorded estimate; and

(B) Discuss the impact, if material, on the registrant's liquidity or capital resources if any of the changes being assumed for purposes of satisfying paragraph (c)(3)(iii)(A)(*1*) or paragraph (c)(3)(iii)(A)(*2*) of this section were in effect;

(iv) Present a quantitative and qualitative discussion of any material changes made to the accounting estimate in the past three years (or in the past two years for any filing made before [one year after the effective date of the final rule]), describe the reasons for the changes and discuss the effect on line items in the financial statements and overall financial performance;

(v) Disclose whether or not the registrant's senior management has discussed the development and selection of the critical accounting estimates, and the MD&A disclosure regarding them, with the audit committee of the registrant's board of directors (or the equivalent oversight group). If the senior management has not had these discussions, disclose the reasons why not; and

(vi) If the registrant operates in more than one segment, identify the disclosed segments that the accounting estimate affects. To the extent that the disclosure under the requirements of paragraph (c) of this section only on a company-wide basis would result in an omission that renders the disclosure materially misleading, include a separate discussion on a segment basis for the identified segments of the registrant's business about which disclosure is otherwise required.

(4) *Disclosure regarding initial adoption of an accounting policy.* If an accounting policy initially adopted by the registrant (other than those solely resulting from the adoption of new accounting literature issued by a recognized accounting standard setter) had a material impact on its financial condition, changes in financial condition or results of operations, disclose:

(i) The events or transactions that gave rise to the initial adoption;

(ii) The accounting principle that has been adopted and the method of applying that principle;

(iii) The impact, qualitatively, on the financial condition, changes in financial condition and results of operations of the registrant;

(iv) If the registrant is permitted a choice between acceptable accounting principles, an explanation it made such a choice, what the alternatives were, and why it made the choice that it did (including, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that alternatives would have had); and

(v) If no accounting literature exists that governs the accounting for the events or transactions giving rise to the initial adoption, an explanation of the registrant's decision regarding which accounting principle to use and which method of applying that principle to use.

(5) *Quarterly reports.* In a quarterly report on Form 10–Q (§ 249.308a of this chapter), in a separately-captioned section of ''Management's Discussion and Analysis of Financial Condition and Results of Operations,'' disclose:

(i) For any critical accounting estimate that was not previously discussed as a critical accounting estimate in the MD&A section of the registrant's last Form 10–K (§ 249.310 of this chapter) or any of its subsequent Forms 10–Q, the information required by paragraph (c)(3) of this section; and

(ii) For any critical accounting estimate previously discussed as a critical accounting estimate in the MD&A section of the registrant's last Form 10–K or any of its subsequent Forms 10–Q, any material change to that prior disclosure (other than disclosure under paragraph (c)(3)(iv) of this section) necessary to make that disclosure not materially misleading as of the time the registrant files its Form 10–Q for the current fiscal quarter.

Instructions to paragraph (c) of § 229.303:

1. The changes being assumed in connection with paragraph (c)(3)(iii)(A) of this section must be meaningful and therefore may not be so minute as to avoid, or materially understate, any demonstration of sensitivity.

2. Your response to this section requires you to make certain forward-looking statements. Examples include, but are not limited to: a registrant's disclosure of the reasonably possible, near-term changes in its assumptions underlying accounting estimates; a discussion of the assumptions underlying an estimate that involve, for example, projections of future sales; and

a discussion of the expected effect if a known uncertainty were to come to fruition and result in a change in management's assumptions. If the terms and conditions of Section 27A of the Securities Act (15 U.S.C. 77z–2), Section 21E of the Exchange Act (15 U.S.C. 78u–5), § 230.175 of this chapter or § 249.3b–6 of this chapter are satisfied, forward-looking statements would be entitled to the safe harbor protection. Registrants are encouraged to consider the terms, conditions and scope of those safe harbors when drafting disclosure, particularly when preparing disclosure under the provisions of paragraph (c) of this section.

3. For purposes of paragraph (c)(5) of this section, the registrant preparing the disclosure required by this paragraph may presume that investors have read or have access to the discussion of critical accounting estimates in its most recently filed Form 10–K and any of its subsequent Forms 10–Q.

4. All information provided under paragraph (c) of this section must be presented in clear, concise format and language that is understandable to the average investor. The information provided in this section must not be presented, for example: only as a general discussion of multiple critical accounting estimates in the aggregate or of multiple new accounting policies in the aggregate; as boilerplate disclosures that do not specifically address the registrant's particular circumstances and operations; as lists of accounting estimates relating to each material line item in the registrant's financial statements; or as disclosures that consist principally of disclaimers of legal liability for the preparation of the registrant's critical accounting estimates or initial application of an accounting policy.

5. Refer to the Commission's release number 33–_____ dated_____, 200__ (adopting paragraph (c) of this section) for guidance in preparing the disclosure relating to critical accounting estimates in this MD&A.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

6. Form 20–F (referenced in § 249.220f), Item 5 is amended by:

a. Adding paragraph E.,

b. Adding a sentence to the end of Instruction 2 of Instructions to Item 5,

c. Removing Instruction 3 of Instructions to Item 5, and

d. Adding Instructions to Item 5.E. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

E. The application of critical accounting policies.

1. Disclosure requirement in annual reports and registration statements. In an annual report filed under the Exchange Act or a registration statement filed under the Securities Act or the Exchange Act, include a separately-captioned section in ''Operating and Financial Review and Prospects'' setting forth the disclosure regarding the company's application of critical accounting policies required by Item 5.E.3. and Item 5.E.4. of this Form. Except as otherwise stated, the discussion must cover the financial statements for the most recent fiscal year and any subsequent period for which interim period financial statements are required to be included.

2. Definitions.

(a) *Accounting estimate.* As used in Item 5.E., the term *accounting estimate* means an approximation made by management of a financial statement element, item or account in the financial statements.

(b) *Critical accounting estimate.* An accounting estimate recognized in the financial statements presented is a *critical accounting estimate* for purposes of this Item if:

(i) the accounting estimate requires the company to make assumptions about matters that are highly uncertain at the time the accounting estimate is made; and

(ii) different estimates that the company reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the company's financial condition, changes in financial condition or results of operations.

(c) *Near-term.* As used in Item 5.E.3., the term *near-term* means a period of time going forward up to one year from the date of the financial statements.

(d) *Reasonably possible.* As used in Item 5.E.3., the term *reasonably possible* means the chance of a future transaction or event occurring is more than remote but less than likely.

3. Disclosure regarding critical accounting estimates. For each critical accounting estimate:

(a) Identify and describe the accounting estimate. Describe the methodology underlying the accounting estimate. Describe the assumptions underlying the accounting estimate that relate to matters highly uncertain at the time the estimate was made. Describe any other underlying assumptions that are material. Discuss any known trends, demands, commitments, events or uncertainties that are reasonably likely to occur and materially affect the methodology or assumptions described. Disclose, if applicable, why different estimates that would have had a material impact on the company's financial presentation could have been used in the current period. Describe, if applicable, why the accounting estimate is reasonably likely to change from period to period with a material impact on the financial presentation.

(b) Explain the significance of the accounting estimate to the company's financial condition, changes in financial condition and results of operations and, where material, identify the line items in the financial statements affected by the accounting estimate.

(c)(1) Present either:

(i) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that reasonably possible near-term changes occur, both negative and positive (where applicable), in the most material assumption or assumptions underlying the accounting estimate; or

(ii) A quantitative discussion of changes in overall financial performance, and to the extent material the line items in the financial statements, assuming that the accounting estimate was changed to the upper end and the lower end of the range of reasonable possibilities determined by the company in the course of formulating its recorded estimate; and

(2) Discuss the impact, if material, on the company's liquidity or capital resources if any of the changes being assumed for purposes of satisfying paragraph 5.E.3.(c)(1)(i) or paragraph 5.E.3.(c)(1)(ii) of this Item were in effect.

(d) Present a quantitative and qualitative discussion of any material changes made to the accounting estimate in the past three years (or in the past two years for any filing made before [one year after the effective date of the final rule]), describe the reasons for the changes and discuss the effect on

line items in the financial statements and overall financial performance.

(e) Disclose whether or not your senior management has discussed the development and selection of the critical accounting estimates, and the MD&A disclosure regarding them, with the audit committee of your board of directors (or the equivalent oversight group). If your senior management has not had these discussions, disclose the reasons why not.

(f) If the company operates in more than one segment, identify the disclosed segments that the accounting estimate affects. To the extent that the disclosure under the requirements of this Item 5.E. made only on a company-wide basis would result in an omission that renders the disclosure materially misleading, include a separate discussion on a segment basis for the identified segments of your business about which disclosure is otherwise required.

4. Disclosure regarding initial adoption of an accounting policy. If an accounting policy initially adopted by the company (other than those solely resulting from the adoption of new accounting literature issued by a recognized accounting standard setter) had a material impact on its financial condition, changes in financial condition or results of operations, disclose:

(a) The events or transactions that gave rise to the initial adoption;

(b) The accounting principle that has been adopted and the method of applying that principle;

(c) The impact, qualitatively, on the financial condition, changes in financial condition and results of operations of the company;

(d) If the company is permitted a choice between acceptable accounting principles, an explanation it made such a choice, what the alternatives were, and why it made the choice that it did (including, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that alternatives would have had); and

(e) If no accounting literature exists that governs the accounting for the events or transactions giving rise to the initial adoption, an explanation of the company's decision regarding which accounting principle to use and which method of applying that principle to use.

Instructions to Item 5: * * *

2. * * * With respect to the disclosure under Item 5.E., although the discussion would focus on the primary financial statements, you also must consider any reconciliation to U.S. GAAP and include disclosure required under Item 5.E. for any critical accounting estimate that is related to the application of U.S. GAAP and for any initial adoption of an accounting policy that is related to the application of U.S. GAAP.

Instruction to Item 5.A:

* * * * *

Instructions to Item 5.E:

1. The changes being assumed in connection with Item 5.E.3.(c)(1) must be meaningful and therefore may not be so minute as to avoid, or materially understate, any demonstration of sensitivity.

2. Item 5 requires you to make certain forward-looking statements. Examples of forward-looking statements include, but are not limited to: a company's disclosure of the reasonably possible, near-term changes in its assumptions underlying accounting estimates; a discussion of the assumptions underlying an estimate that involve, for example, projections of future sales; and a discussion of the expected effect if a known uncertainty were to come to fruition and result in a change in management's assumptions. If the terms and conditions of Section 27A of the Securities Act (15 U.S.C. 77z–2), Section 21E of the Exchange Act (15 U.S.C. 78u–5), § 230.175 of this chapter or § 249.3b–6 of this chapter are satisfied, forward-looking statements would be entitled to the safe harbor protection. Companies are encouraged to consider the terms, conditions and scope of those safe harbors when drafting disclosure, particularly when preparing disclosure under the provisions of Item 5.E.

3. All information provided under Item 5.E. must be presented in clear, concise format and language that is understandable to the average investor. The information provided in Item 5.E. must not be presented, for example: only as a general discussion of multiple critical accounting estimates in the aggregate or of multiple new accounting policies in the aggregate; as boilerplate disclosures that do not specifically address the company's particular circumstances and operations; as lists of accounting estimates relating to each material line item in the company's financial statements; or as disclosures that consist principally of disclaimers of legal liability for the company's preparation of critical accounting estimates or initial application of an accounting policy.

4. Refer to the Commission's release number 33–_____ dated_____, 200__ (adopting Item 5.E.) for guidance in preparing the disclosure relating to critical accounting estimates in this discussion and analysis by management of the company's financial condition, changes in financial condition and results of operations.

* * * * *

Dated: May 10, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12259 Filed 5–17–02; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday,
May 20, 2002

Part III

Federal Election Commission

11 CFR Parts 100, 102 et al.
Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 104, 106, 108, 110, 114, 300, and 9034

[Notice 2002–7]

Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules relating to funds raised, received, and spent by party committees under the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''). The proposed rules are based on the Bipartisan Campaign Reform Act of 2002 (''BCRA''), which adds to the Act new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds, which are commonly referred to as ''soft money.'' BCRA and the proposed rules prohibit national parties and Federal candidates and officeholders from raising non-Federal funds. They also generally require State, district, and local party committees to fund ''Federal election activity,'' including voter registration and get-out-the-vote (''GOTV'') drives, with money raised pursuant to the limitations, prohibitions, and reporting requirements of the Act, or with a combination of funds subject to various requirements of the Act and BCRA. They also address fundraising by Federal and non-Federal candidates and officeholders on behalf of political party committees, other candidates, and non-profit organizations.

BCRA's general effective date is November 6, 2002, the day following the November 2002 general election, although national party committees that received soft money prior to that date may use these funds for certain purposes before January 1, 2003. The changes to the Act's contribution limits take effect on January 1, 2003.

Further information is contained in the Supplementary Information that follows. Please note that the Commission has not made a final decision on any of these proposals.

DATES: Comments must be received on or before May 29, 2002. The Commission will hold a hearing on these proposed rules on June 4 and 5, 2002, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *BCRAsoftmon@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The hearing will be held in the Commission's ninth floor meeting room, 999 E St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Attorneys Ruth Heilizer (definitions), Jonathan M. Levin (office buildings), Dawn Odrowski (national parties and tax-exempt organizations), Rita A. Reimer (Federal and State candidates), John C. Vergelli (Levin funds), or Anne A. Weissenborn (parties), 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.* This is the first of a series of Notices of Proposed Rulemakings (''NPRM'') the Commission will publish over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds. Section 402 of BCRA establishes a 90-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 90-day deadline is June 25, 2002.

Future NPRMs will address: (1) Electioneering communications and issue ads; (2) coordinated and independent expenditures; (3) the so-called ''millionaire's amendment,'' which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the increase in contribution limits; and (5) other new and amended provisions, including contribution prohibitions and reporting. This last NPRM will address contributions by minors, foreign nationals, and U.S. nationals; inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; and civil penalties. BCRA's deadline for promulgation of these remaining rules is 270 days after the date of enactment, or December 22, 2002. The Commission also plans to address BCRA's impact on national nominating conventions in a separate rulemaking.

Because of the extremely tight deadline for promulgating these rules, the Commission must adhere to a shorter-than-usual timeline for receiving and considering public input on the proposed rules that follow. This schedule will be strictly adhered to. Comments on this NPRM must be received no later than May 29, 2002. Commenters who wish to testify at the June 4 and 5, 2002 public hearing must so indicate in their comments, also by May 29, 2002.

Introduction

The Act limits the amount that individuals can contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The Act also prohibits corporations and labor organizations from contributing their general treasury funds for these purposes. 2 U.S.C. 441b. Contributions from national banks, 2 U.S.C. 441b(a); government contractors, 2 U.S.C. 441c; foreign nationals, 2 U.S.C. 441e; and minors, new 2 U.S.C. 441k, as enacted by BCRA; as well as contributions made in the name of another, 2 U.S.C. 441f; are also prohibited. These strictures regulate what is often referred to as ''hard money,'' or Federal funds.

Some donations that do not meet the FECA hard money requirements, for example, corporate and labor organization general treasury contributions, may not be used for Federal elections, and are referred to as non-Federal funds.[1] Non-Federal funds

[1] Because the term ''soft money'' is used by different people to refer to a wide variety of funds under different circumstances, the Commission has decided to use the term ''non-Federal funds'' in the rules rather than the term ''soft money.'' BCRA itself does not use the term except in the heading of Title I of BCRA and the headings within Title IV. Some donations that do not meet the Act's hard money requirements, for example, those from foreign nationals, national banks, and Federal corporations, may not be used at all. Nonetheless, the Commission seeks comment on whether use of the term ''soft money'' would in some instances be a better approach.

may not be used for the purpose of influencing any election for Federal office. Funds raised that are used by State or local parties or State or local candidates wholly on non-Federal elections may be governed by State or local law. Prior to BCRA's revisions, the FECA permitted national party committees, Federal candidates, and officeholders to raise money not subject to some of the Act's source limitations and prohibitions. Beginning November 6, 2002, under BCRA, national party committees ''may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.'' 2 U.S.C. 441i(a).

BCRA also provides that State, district, and local political party committees must pay for ''Federal election activities,'' which is a new term introduced and defined by BCRA, 2 U.S.C. 431(20), 441i(b)(1), with entirely Federal funds or, in some cases, a mixture of Federal funds and a new type of non-Federal funds, which the proposed rules call ''Levin funds.'' These two provisions are related in that the latter is intended to prevent evasion of the former. A national political party committee may not evade the restrictions in BCRA by merely transferring its spending for Federal election activity to State, district, or local party committees. The State, district, and local party committees must spend Federal funds on these activities. *See* 148 Cong. Rec. H408–409 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The ''Levin Amendment'' (named after Sen. Levin of Michigan who offered it) provides an exception or refinement to the requirement that State, district, and local party committees must spend only hard money for Federal election activities. The Levin Amendment provides that State, district, and local political party committees may use funds that do not meet all of the Act's limitations, prohibitions, and reporting requirements for a portion of certain Federal election activities if certain conditions are satisfied. *See* 2 U.S.C. 441i(b)(2)(A). The proposed regulations refer to these funds, which are a subset of non-Federal funds, as ''Levin funds,'' a term which would be defined in the proposed regulations. BCRA does not permit national party committees, candidate committees, separate segregated funds, or nonconnected committees to raise or spend Levin funds.

A State, district, or local political party committee may spend under the Levin Amendment if the expenditure or disbursement is allocated between Federal funds and Levin funds. BCRA contemplates that the Commission will adopt regulations prescribing the allocation requirements. 2 U.S.C. 441i(b)(2)(A). *See* below. Under BCRA, Federal candidates and officeholders may not solicit or receive non-Federal funds in connection with a Federal election, and may raise only limited amounts in connection with non-Federal elections. 2 U.S.C. 441i(e)(1) and (2). These far-reaching amendments affect many other aspects of the Act and the Commission's rules. For example, the prohibition on Federal candidate and officeholder solicitation of non-Federal funds, and national party committees' solicitation or receipt of non-Federal funds, applies to convention committees, which are established by national committees under 11 CFR 9008.3(a). These statutory changes could apply to other entities as well. *See* 2 U.S.C. 441i(a)(2). As noted above, BCRA's impact on national nominating conventions will be addressed in a separate rulemaking. It also will be necessary to rewrite the Commission's allocation rules at 11 CFR part 106. *See* below.

The proposed rules are described and explained below. In several sections the Commission has identified specific questions, issues, or alternatives for which it seeks comments. In addition, the Commission welcomes comments that address issues not raised in this NPRM.

Scope, Effective Date, and Organization

The Commission proposes to prescribe new rules for non-Federal funds of political party committees. The bulk of these rules would be in 11 CFR part 300. Proposed 11 CFR 300.1 addresses the scope of new part 300, sets forth the effective date of the provisions contained in the new part, and outlines the organization of the new part. Specifically, proposed paragraph (a) of section 300.1 states that proposed new part 300 would implement changes to the FECA, enacted by Title I of BCRA. It also notes that nothing in part 300 is intended to alter the definitions, restrictions, liabilities, and obligations imposed by sections 431–455 of Title 2 of the United States Code or in the regulations prescribed thereunder in 11 CFR parts 100–116.

The effective date of BCRA, except where otherwise stated, is November 6, 2002. *See* 2 U.S.C. 431 note, section 402(a). Paragraph (b) of proposed section 300.1 states that part 300 would take effect on November 6, 2002, except for the following: (1) Where otherwise stated in part 300; (2) subpart B of part 300 relating to State, district, and local party committees will not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to November 6, 2002; (3) the increase in individual contribution limits to State party committees as set forth in proposed 11 CFR 110.1(c)(5) will apply to contributions made on or after January 1, 2003, and (4) national parties must spend any remaining non-Federal funds received before November 6 and in their possession on that date before January 1, 2003, subject to the transition rules set forth in proposed 11 CFR 300.12.

Finally, paragraph (c) of section 300.1 indicates that part 300 would be organized into five subparts, with each subpart addressing a specific category of persons affected by BCRA. Specifically, subpart A of part 300 prescribes rules pertaining to national party committees; subpart B prescribes rules pertaining to State, district, and local party committees and organizations; subpart C addresses rules affecting certain tax-exempt organizations; subpart D prescribes rules pertaining to Federal candidates and Federal officeholders; and subpart E prescribes rules pertaining to State and local candidates. BCRA also requires changes in these parts of Title 11 of the *Code of Federal Regulations,* which are also addressed in this rulemaking.

Definitions

The proposed rules would amend an existing definition and add several new ones. Some of the new definitions would be added to current 11 CFR part 100 because they would have general applicability in Title 11 of the *Code of Federal Regulations.* The remaining new definitions would be added to proposed new 11 CFR part 300. The definitions are explained below.

1. Proposed 11 CFR 100.24 Definition of ''Federal Election Activity''

BCRA amends 2 U.S.C. 431 by adding a new term, ''Federal election activity,'' which consists of certain activities that State and local committees of political parties must pay for with either Federal funds or a combination of Federal funds and Levin funds. As stated above, Levin funds are funds which are exempt from the restrictions and prohibitions of the Act, but which are limited, under BCRA, to $10,000 per donor and which must comply with State law.

The proposed definition of Federal election activity, which would be incorporated into proposed new 11 CFR

100.24, tracks BCRA by including in Federal election activity the following activities when they occur in close proximity to, or in connection with, a Federal election: Voter registration; voter identification; GOTV drives; and public communications that refer to clearly identified Federal candidates, even if candidates for State and local offices are also mentioned. (''Generic campaign activities'' are discussed below.)

With respect to ''voter registration activity,'' which is addressed in proposed 11 CFR 100.24(a)(1), ''special elections'' are excluded, pursuant to BCRA. However, with regard to proposed 11 CFR 100.24(a)(2), which addresses other activities conducted in connection with an election, such as voter identification and GOTV activities, BCRA does not exclude ''special elections.'' Therefore, under proposed 11 CFR 100.24(a)(2), voter identification and GOTV activities would constitute Federal election activity if conducted in connection with special elections.

Proposed 11 CFR 100.24(a)(2)(i) would set forth examples of ''voter identification,'' such as activities designed to determine registered voters, likely voters, or voters indicating a preference for a candidate or political party. The Commission seeks comments as to whether those are appropriate examples of voter identification, or whether they are too broad or too narrow. Do efforts to identify potential voters for State or local candidates, without any mention of a Federal candidate, constitute Federal election activity? Should there be a *de minimis* level of voter identification activities related to Federal elections that would nonetheless not render certain activities ''Federal election activities'' under BCRA? For example, would a State committee's purchase of a list of voters from a vendor for the purpose of State fundraising constitute ''Federal election activity''? Should ''voter identification'' be read in conjunction with ''GOTV'' to reach only those activities intended to identify voters for GOTV purposes? Should there be a defined time period that distinguishes ''voter identification'' from GOTV activities? For example, is an activity designed to identify supporters of a gubernatorial candidate ''voter identification'' if conducted several weeks or months before an election, but ''GOTV'' if conducted within a week of the election? What other examples of ''voter identification'' should be included in the regulations?

The Commission also notes that some examples of ''voter identification,'' such as activities designed to determine registered voters or likely voters, may sometimes be conducted on a nonpartisan basis. Nonpartisan activities intended to encourage individuals to vote or to register to vote appear to come within the definition of ''Federal election activity'' under BCRA. Nevertheless, should non-partisan GOTV drives be excluded from the definition of ''Federal election activity'' in 11 CFR 100.24? *See* 2 U.S.C. 431(9)(B)(ix). Is it appropriate to treat certain party or candidate-initiated or 501(c) activities as nonpartisan voter drives? If so, under what conditions?

Proposed 11 CFR 100.24(a)(2)(iii) contains the following examples of GOTV activities: Transporting voters to the polls; contacting voters on election day or shortly before to encourage voting, but without referring to any clearly identified candidate for Federal office; and distributing printed slate cards, sample ballots, palm cards, or other printed listing(s) of three or more candidates for any public office. The Commission seeks comments as to whether there should be a *de minimis* level of GOTV activities related to Federal elections that would nonetheless not render these activities ''Federal election activities'' under BCRA.

In addition, the Commission seeks comments concerning additional examples of GOTV activity for possible inclusion in the final version of this proposed rule. The Commission also seeks comments on whether printed slate cards, sample ballots, and palm cards should properly be considered GOTV activities or ''public communications.''

The Commission notes that, although slate cards, sample ballots, and printed listings of three or more candidates are exempted from the Act's definitions of ''contribution'' and ''expenditure,'' (*see* 2 U.S.C. 431(8)(b)(v) and (9)(b)(iv)), they could be viewed as falling within the term ''Federal election activities'' under BCRA. Should they?

The Commission also notes that voter identification, GOTV, and generic campaign activity are only ''Federal election activities'' under BCRA when they are conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State of local office also appears on the ballot.) The Commission seeks comments on how this requirement should be construed and implemented—specifically, during what period(s) of time should a Federal candidate be deemed to be on the ballot? Congress clearly intended to establish certain periods of time in which a Federal candidate is not deemed to be on the ballot. How should the Commission proceed in effectuating Congress' intent?

The Commission notes that there are a variety of ways in which Federal candidates may qualify to have their names placed on the ballots of their States and that these processes are governed by State law. In addition, the method by which a candidate for Federal office obtains a position on the ballot is likely to differ for primaries and general elections. In some cases, one State political party may choose its candidate for Federal office before other State political parties choose their candidates. Should the Commission construe the statutory language ''on the ballot'' to encompass the period of time beginning on the earliest date that any Federal candidate could qualify for a position on the ballot according to the time periods specified in the applicable State law or should the time period begin on the day the filing period for Federal offices closes under State law? In the alternative, does this time period begin on January 1 of any Federal election year, that is, each even-numbered year? Or should the time period begin on the date that any individual has become a Federal candidate under the Act? *See* 2 U.S.C. 431(2) and 11 CFR 100.3(a)(1) through (4) regarding the definition of ''candidate'' for FECA purposes. In some States, most non-Federal elections are held in odd-numbered years. Should the Commission only exempt from ''Federal election activity'' that voter identification, GOTV, and generic campaign activity that occurs in such States in odd-numbered years?

Proposed 11 CFR 100.24(a)(3) follows new 2 U.S.C. 431(20) by providing that a public communication that refers to a clearly identified candidate for Federal office would constitute ''Federal election activity'' that must be paid for with Federal funds if the communication promotes, supports, attacks, or opposes any candidate for that Federal office. This is true even if a candidate for State or local office is also mentioned or identified. However, public communications that do not promote, support, attack, or oppose any Federal candidate, as well as certain contributions to State or local candidates, the costs of State, district, or local political conventions or similar meetings and conferences, and grassroots materials that refer only to non-Federal candidates would be specifically excluded from the definition of ''Federal election activity.''

''Public communication'' is defined in proposed 11 CFR 100.26, discussed

below. Thus, the definition of ''Federal election activity'' in proposed 11 CFR 100.24 and BCRA would extend beyond communications expressly advocating a vote for or against a candidate. Note that a proposed definition of ''promote or support or attack or oppose'' is set forth in proposed 11 CFR 300.2(l), which is discussed below.

BCRA also crafted 2 U.S.C. 431(20) to exempt from the definition of ''Federal election activity'' certain expenditures or disbursements by State, district, or local committees of political parties for certain activities which may be paid for with non-Federal funds. These activities are:

(1) Public communications that refer to a clearly identified candidate for State or local office, provided that the public communications are not voter registration activity, voter identification, generic campaign activity, or GOTV activity, as those terms are defined in proposed 11 CFR 100.24(a). This exception does not apply, for example, to a telephone bank on the day before an election where there is a federal candidate on the ballot and where GOTV phone calls are made to over 500 voters where the calls only refer to a State or local candidate (proposed 11 CFR 100.24(b)(1)).

(2) Contributions to candidates for State or local office, provided that the contributions are not for Federal election activities (proposed 11 CFR 100.24(b)(2)).

(3) The costs of State, district, or local political conventions, meetings or conferences (proposed 11 CFR 100.24(b)(3)).

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters and yard signs, that name or depict no Federal candidate (proposed 11 CFR 100.24(b)(4)).

(5) Voter registration activity before or after the dates during which this activity becomes Federal election activity (proposed 11 CFR 100.24(b)(5)).

(6) GOTV and voter identification activities in elections in which no candidate for Federal office appears on the ballot (proposed 11 CFR 100.24(b)(6)).

The Commission also seeks comments concerning additional examples of ''grassroots'' activities.

2. Proposed 11 CFR 100.25 Definition of ''Generic Campaign Activity''

Proposed section 100.25 contains the new statutory definition of ''generic campaign activity,'' which is campaign activity that promotes a political party, and not a candidate for Federal office or for non-Federal office. The proposed rules would add to the statutory definition those activities that oppose a political party without opposing specific candidates. Activities in opposition to a particular party or candidate may be construed as a form of promoting the other party or other candidates. Unlike ''voter registration activity,'' as described in 11 CFR 100.24(a)(1), the Commission is proposing to interpret ''generic campaign activity'' to apply to special elections. In addition, the Commission seeks comment on the extent, if any, to which the exclusions for exempt activities in 11 CFR 100.7(b)(9), (15), (17) and 100.8(b)(8), (10), and (16), should apply to the definition of ''generic campaign activity. ''

3. Proposed 11 CFR 100.26 Definition of ''Public Communication''

BCRA amends 2 U.S.C. 431 by adding a new definition for the term ''public communication.'' BCRA defines ''public communication'' to include communication by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. In proposed 11 CFR 100.26, the Commission has not included the Internet as a form of ''general public political advertising'' because this provision of BCRA does not refer to the Internet. However, the Commission seeks comments as to whether the definition of ''public communication'' in proposed 11 CFR 100.26 should include or exclude communications provided through the use of World Wide Web sites available to the public, widely distributed electronic mail, or other uses of the Internet, such as ''Webcasts'' or the transmission of high-quality voice, graphics, or video advertisements.

A letter sent by Chairman Mason and Commissioner Smith requested that Congress clarify whether the term ''public communication'' was intended to encompass communications sent over the Internet. The letter noted that the definition included ''any other form of general public political advertising,'' and stated: ''The Commission has treated Internet web pages available to the public and widely-distributed e-mail as forms of 'general public political communication.' Thus, the new definition combined with the Commission's established interpretation of the FECA could command regulation of Internet and e-mail communications.'' *See* 148 Cong. Rec. S2340 (daily ed. March 22, 2002). Congress did not express agreement or disagreement with this interpretation.

4. Proposed 11 CFR 100.27 Definition of ''Mass Mailing''

BCRA amends 2 U.S.C. 431 by adding a new definition of the term ''mass mailing.'' This new definition, which is set out in proposed 11 CFR 100.27, would include any mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

The term ''substantially similar'' is also used in the Commission's disclaimer regulations at 11 CFR 110.11(a)(3). When these rules were adopted in 1995, the Commission explained that technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. Communications are considered ''substantially similar'' for purposes of the disclaimer rules if they would be the same but for such individualization. *See* Explanation and Justification for Regulations on Communications Disclaimer Requirements, 60 FR 52069, 52070 (Oct. 5, 1995). The Commission is proposing that the term ''substantially similar'' as used in proposed 11 CFR 100.27 have the identical meaning, and is including language to this effect in the text of the rule. However, it welcomes comments as to whether some other definition of ''substantially similar'' would be more appropriate in this context.

5. Proposed 11 CFR 100.28 Definition of ''Telephone Bank''

BCRA amends 2 U.S.C. 431 by adding a new definition of the term ''telephone bank.'' This new definition, which is set out in proposed 11 CFR 100.28, would include more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. The Commission is also proposing to address the meaning of ''substantially similar'' in the text of the rules. *See* discussion of proposed 11 CFR 100.27, above.

6. Proposed 11 CFR 300.2 Definitions

In proposed new section 300.2, the Commission seeks comments on draft definitions for the following terms: ''501(c) organization that makes expenditures or disbursements in connection with a Federal election''; ''agent''; ''directly or indirectly establish, finance, maintain, or control''; ''disbursement''; ''donation''; ''Federal account''; ''Federal funds''; ''Levin account''; ''Levin funds''; ''non-Federal account''; ''non-Federal funds''; ''promote, support, attack, or oppose'';

and ''to solicit or direct.'' Several of these terms are adapted from existing rules.

Several key terms are discussed in further detail below. In addition, the Commission notes that proposed 11 CFR 300.2 defines several phrases, such as ''directly or indirectly establish, finance, maintain, or control,'' ''to solicit or direct,'' and ''promote or support or attack or oppose,'' rather than attempting to define the individual words in each phrase. Comments are sought on this approach, and on the clarity and scope of these definitions.

A. Definition of ''Agent''

With respect to the definition of ''agent,'' the Commission seeks comments as to when an agent is acting ''on behalf of'' a principal. Additionally, the Commission seeks comments as to the circumstances under which a principal, such as a party committee or a candidate, would be held liable for the actions of an agent, such as an individual soliciting funds on behalf of the committee for a 501(c) organization. For example, must such an individual be a paid employee of the principal (*i.e.,* the candidate or officeholder) in order to qualify as an agent or would a vendor or independent consultant hired by a candidate or political committee qualify as an agent? Could a principal be held responsible for the actions of a volunteer who solicited impermissible funds if the volunteer was making solicitations pursuant to general written or oral instructions from the principal? Would a volunteer qualify as an agent if a principal had knowledge that a volunteer was making impermissible solicitations using the candidate's name without being specifically directed by the principal to do so? In addition, should a principal only be held liable if an agent has actual, as opposed to apparent, authority to engage in the alleged actions at issue? Similarly, should a principal only be held liable if an agent has express, rather than implied, authority to act? Or should the Commission not attempt to define agency concepts in this part of the regulations, but instead leave the concepts undefined for purposes of BCRA and rely on common law definitions? Please note that the latter approach would depart from the approach taken regarding the definition of agency in the current independent expenditure rules. *See* 11 CFR 109.1(b)(5).

B. Definition of ''Directly or Indirectly Establish, Finance, Maintain, or Control''

Proposed 11 CFR 300.2(c) would define ''directly or indirectly establish, finance, maintain, or control,'' a term that is used in several provisions of BCRA. (The phrase ''established, financed, maintained, or controlled'' already appears in the Commission's ''affiliation'' regulation. *See* 2 U.S.C. 441a(a)(5), 11 CFR 100.5(g).) The term appears in BCRA in the context of State, district, and local political party committees (*see, e.g.*, 2 U.S.C. 441i(b)(2)(B)(iii)) and of Federal candidates and officeholders (*see, e.g.*, 2 U.S.C. 441i(e)(1)).

In BCRA, ''directly or indirectly establish, finance, maintain, or control'' is used in one context which seems to be akin to the current affiliation rule, that is, determining when ostensibly separate entities share a contribution limit. *See* 2 U.S.C. 441i(b)(2)(B)(iii). This usage would suggest that the existing affiliation regulation is helpful in understanding what is meant by ''directly or indirectly establish, finance, maintain, or control.'' The term, ''directly or indirectly establish, finance, maintain, or control,'' however, is also used in what seems to be a slightly different manner. For example, a State, district, or local committee of a political party must not use as ''Levin funds'' (a term that would also be defined in this section) any funds transferred to it from, among other persons, ''any other State, local, or district committee of any State party, * * * or * * * any entity directly or indirectly established, financed, maintained, or controlled [by the State party committee].'' 2 U.S.C. 441i(b)(2)(B)(iv)(I), (IV); *see also* 2 U.S.C. 441i(e)(1). This latter usage suggests a different purpose, namely preventing the proliferation of committees or organizations as a means of evading the Levin Amendment transfer prohibition, as well as other BCRA prohibitions.

The definition in proposed 11 CFR 300.2(c) would accommodate both of the usages of the term ''directly or indirectly establish, finance, maintain, or control.'' Proposed paragraph (c)(1) would begin by enumerating the persons to whom the regulation would apply, and would employ the shorthand ''sponsor'' to refer to these persons. Also in proposed paragraph (c)(1), the statutory concept of ''indirect'' establishment, financing, maintenance, or control would be addressed by including actions taken by a sponsor's agents, and those taken on behalf of the sponsor, or at the sponsor's behest, within the definition.

Proposed paragraph (c)(1)(i) would provide that a sponsor ''directly or indirectly establishes, finances, maintains, or controls'' an entity if the sponsor and the entity would be considered affiliated under 11 CFR 100.5(g).

Given that the term, ''directly or indirectly establish, finance, maintain, and control,'' seems also to have a somewhat broader meaning in other contexts, proposed paragraphs (c)(1)(ii) through (c)(1)(vi) would go on to state other conditions in which a sponsor would ''directly or indirectly establish, finance, maintain, or control'' an entity. The Commission seeks comment on whether this term should be interpreted to extend beyond the current affiliation standard.

Proposed paragraph (c)(1)(ii) would focus on the establishment of entities by sponsors, and would extend to the conversion of an existing entity. Note that the proposed phrase, ''alone or in combination with others,'' would extend this provision to circumstances in which a sponsor (or its agent) was not solely responsible for the establishment of the entity, but worked with one or more other persons to establish the entity. The Commission seeks comment on whether this proposed paragraph should apply only to entities established by a sponsor after a given date (perhaps November 6, 2002, which is the effective date of BCRA), provided that the sponsor and the entity are not affiliated and do not satisfy the conditions in proposed paragraphs (c)(1)(iii) through (vi). In the alternative, should there be a rebuttable presumption that entities organized before a given date are not directly or indirectly established by a sponsor, provided that the sponsor and the entity are not affiliated and do not satisfy the conditions in proposed paragraphs (c)(1)(iii) through (vi)?

Proposed paragraph (c)(1)(iii) would address financing of an entity by a sponsor. It would state that providing a ''significant amount of the entity's funding at any point'' would suffice to constitute ''financing.'' The proposed paragraph would enumerate three factors to be used in gauging the ''significance'' of funding. These factors would go to the magnitude, frequency, and duration of funding, and to how recently or distantly (in time) the funding has been provided. For example, a sponsor that had provided a sizable, but one-time contribution to an entity many years earlier would be able to assert that the one-time nature of the contribution, combined with its

remoteness in time, make this funding not ''significant,'' as the term is used here.

Proposed paragraph (c)(1)(iv) would address the maintenance of an entity by a sponsor. It would state that providing certain services to an entity would constitute ''maintaining'' the entity. The Commission seeks comment on whether there should be a *de minimis* exception to this provision. For example, if a party committee provides a *de minimis* amount of administrative services to a party-related organization, such as a governor's association, should this activity be included in this provision?

Proposed paragraphs (c)(1)(v) and (c)(1)(vi) would go to control of an entity by a sponsor. Proposed paragraph (c)(1)(v) would focus on control, whether formal or informal, by the sponsor of solicitation of contributions and donations, and of making expenditures or disbursement, by the entity. Proposed paragraph (c)(1)(vi) would focus on more formal or structural decision-making relationships between the sponsor and the entity.

The Commission seeks comment on several aspects of these conditions. In proposed paragraph (c)(1)(ii), a sponsor would ''directly or indirectly establish, finance, maintain, or control'' an entity if the sponsor provided ''any funding'' for the formation or organization of the entity. The Commission seeks comment as to whether there should be a *de minimis* exception to the proposed ''any funding'' rule. Proposed paragraph (c)(1)(iii) would provide that a sponsor would ''directly or indirectly establish, finance, maintain, and control'' an entity if the sponsor ''provides a significant amount of the entity's funding at any point in the entity's existence.'' The Commission seeks comment about whether ''at any point'' should be replaced with a temporal limit (e.g., ''within the past 5 years'').

Proposed paragraph (c)(2) would provide a mechanism for a sponsor or an entity to request a determination by the Commission through the advisory opinion process that the sponsor is no longer deemed to finance, maintain, or control an entity, even if it established the entity.

C. Definition of ''Donation''

BCRA uses but does not define the term ''donation.'' The Commission proposes to define a ''donation'' in 11 CFR 300.2(e) as a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate or party committee, but not including a contribution or transfer. Comments are sought on specifically excluding from ''donation'' some of the exemptions to ''contribution'' set forth in existing 11 CFR 100.7(b). Under this approach, the following would not be donations: Funds received solely for the purpose of determining whether an individual should become a Federal candidate (existing 11 CFR 100.7(b)(1)(i)); any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publisher (existing 11 CFR 100.7(b)(2)); individual volunteer services provided without compensation to Federal candidates and political committees (existing 11 CFR 100.7(b)(3)); the costs of providing the use of residential premises or of church or community rooms in the course of volunteering personal services to candidates or political parties (existing 11 CFR 100.7(b)(4) and (5)); the cost of invitations, food, and beverages in accordance with existing 11 CFR 100.7(b)(6); unreimbursed transportation and subsistence costs under existing 11 CFR 100.7(b)(7); and the staging of candidate debates in accordance with existing 11 CFR 100.7(b)(20) and (21). The Commission seeks comments concerning whether each of these activities should be expressly exempted from the definition of ''donation.'' What, if any, additional expenses should be excluded from the definition of ''donation''? For example, are there particular activities that have been recognized through the Commission's advisory opinion process as exempt from the definition of ''contribution'' (e.g., funds given to a candidate's legal defense fund) that should be exempt from the definition of ''donation'' as well?

D. Definitions of ''Levin Funds'' and ''Levin Accounts''

As explained above, BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain prohibitions, limitations, and reporting requirements added to the Act by BCRA. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements, and unlike ''regular'' non-Federal funds because they are subject to certain additional requirements under BCRA. Proposed paragraph (i) of proposed 11 CFR 300.2 would define these funds as ''Levin funds,'' with the intention that ''Levin funds'' become a definite, unambiguous reference to such funds. Note that the proposed definition contemplates that a State, district, or local political party committee would be permitted to spend Levin funds on non-Federal activity or Federal election activity. As explained more thoroughly below in the discussion of proposed 11 CFR 300.32, the Commission seeks comment as to whether the Levin Amendment (2 U.S.C. 441i(b)(2)) should be interpreted to permit the spending of Levin funds for any purpose other than Federal election activity.

The Commission is considering requiring State, district, and local political party committees to set up a separate account to handle Levin funds if they raise and spend such funds. Proposed paragraph (h) of proposed 11 CFR 300.2 would define ''Levin account'' as these separate accounts for handling Levin funds, which would be established under proposed 11 CFR 300.30. Again, the intention is that the term would become an unambiguous reference to such accounts. The Commission seeks comment as to whether a requirement for mandatory Levin accounts would be more or less burdensome than the alternative of allowing party committees to deposit and spend Levin funds from any non-Federal account. The alternative approach would include a requirement that the committee must be able to show by a reasonable accounting method that the non-Federal portion of an expenditure for Federal election activities under the Levin Amendment (*see* 2 U.S.C. 441i(b)(2)(A)) was comprised of lawful Levin funds.

E. Definition of ''Promote or Support or Attack or Oppose''

BCRA uses the terms, ''promote,'' support,'' ''attack,'' and ''oppose'' in both the Levin Amendment and elsewhere, but does not define these terms. The proposed rules at 11 CFR 300.2(*l*) include a definition, which incorporates the concept of ''unmistakably and unambiguously'' encouraging actions to elect or defeat a clearly identified candidate. *Cf. Buckley* v. *Valeo*, 424 U.S. 1, 43–44 (1976) (restricting the reach of former 18 U.S.C. 608(e)'s ''clearly identified'' to ''an explicit and unambiguous reference to the candidate.'') The Commission has also included language in section 300.2(*l*) from its existing express advocacy regulations, 11 CFR 100.22(a) and (b), but has broadened the scope of these provisions in order to effectuate BCRA's intention of enlarging the scope of regulated communications. The Commission seeks comments as to whether its proposed definition is too broad or too narrow, and why. Specifically, the Commission seeks

comments as to what definition is most likely to survive Constitutional scrutiny.

F. Definition of ''To Solicit or Direct''

Lastly, proposed 11 CFR 300.2(m) contains a definition of ''to solicit or direct'' a contribution or donation. The draft definition would include a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. However, the definition does not construe advice or guidance as to applicable laws to constitute a ''solicitation.'' The Commission seeks comments as to how the concept of ''solicitation'' should be applied to a series of conversations which, taken together, constitute a request for contributions or donations, but which do not do so individually. Comment is also sought as to whether the proposed definition is too broad or narrow, as well as whether the term ''direct'' in BCRA should be interpreted to follow the earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). Comment is also sought as to whether the passive providing of information in response to an unsolicited request for information should be specifically excluded from this definition.

National Party Committees

BCRA prohibits national party committees from raising and spending non-Federal funds, that is, funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act. *See* 2 U.S.C. 441i(a). In explaining the purpose of this prohibition, BCRA co-sponsor, Congressman Shays, stated: ''The purpose of these provisions is simple: to put the national parties entirely out of the soft money business.'' According to Congressman Shays, the corrupting dangers of funds raised outside the Act's prohibitions, limitations, and reporting requirements is present in the funding of national parties given that they operate at the national level and ''are inextricably intertwined with Federal officeholders and candidates, who raise money for them * * *'' 148 Cong. Rec. H408–409 (daily ed. February 13, 2002) (statement of Rep. Shays).

The Commission is proposing to place the regulations that address this prohibition in a new part of the Code of Federal Regulations, 11 CFR part 300, subpart A. In addition to proposing this new subpart, the Commission is also proposing to amend current 11 CFR 102.5 to conform with BCRA's prohibition on national party committees and Federal candidates and officeholders from raising and spending non-Federal funds.

1. Proposed 11 CFR 300.10 General Prohibitions

The proposed rules at 11 CFR 300.10 track the language of BCRA in prohibiting national party committees from soliciting, receiving, or directing to another person ''a contribution, donation, or transfer of funds or any other thing of value,'' or spending funds that are not subject to the Act's prohibitions, limitations, and reporting requirements. Accordingly, national party committees would no longer be able to accept funds from corporations or labor organizations or funds from individuals and others that exceed the limitations of the Act. Further, all expenditures and disbursements made by a national party committee, including donations to State and local candidates and donations or transfers to State parties, would be made with Federal funds.

The national party ban on raising and spending non-Federal funds has widespread application. BCRA expressly provides that the prohibition on raising and spending non-Federal funds also applies to the national party congressional committees (currently, the Democratic Senatorial Campaign Committee, the National Republican Senatorial Committee, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee), to officers and agents acting on behalf of a national party committee or a national party congressional committee, and to any entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(a)(1) and (2). ''The provision is intended to be comprehensive at the national party level. Simply put, the national parties and anyone operating on behalf of them are not to raise or spend nor [sic] to direct or control soft money.'' 148 Cong. Rec. H408–409 (daily ed. February 13, 2002) (statement of Rep. Shays).

The proposed rules track the statutory language. *See* proposed 11 CFR 300.10(a) and (c). Consequently, Federal candidates or Federal officeholders, or anyone else acting on behalf of a national party committee would not be able to raise or spend non-Federal funds or direct them to other persons. Similarly, party-created entities such as convention committees, which are established by a national party committee in accordance with 11 CFR 9008.3(a)(2) to conduct the daily operations of a party's national nominating convention, would not be able to raise or spend, or direct to other persons, funds from corporations or labor organizations, or funds from individuals or other entities in amounts that exceed the Act's contribution limitations. In a subsequent rulemaking, the Commission will seek comment on whether BCRA bans national party committees, and their officers and agents, from directing non-Federal funds to a host committee in light of the statutory language that they are not permitted to direct non-Federal funds to other persons. *See* 2 U.S.C. 441(i)(a)(1).

The proposed rules also make clear that national parties cannot raise, spend, or direct to another person Levin funds. *See* proposed 11 CFR 300.10(a)(3). The Commission seeks comments on whether the rules should contain specific examples of ''entities directly or indirectly established, maintained, financed, or controlled by a national party committee,'' and if so, what entities should be included.

2. Proposed 11 CFR 300.11 Prohibition on National Party Fundraising for Certain Tax-Exempt Organizations

In addition to prohibiting national parties from raising and spending non-Federal funds, BCRA prohibits national party committees, their officers and agents, and entities directly or indirectly established, financed, maintained, or controlled by them from raising funds for, or making or directing donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d)(1). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election.

Specifically, the party fundraising ban extends to organizations exempt from taxation under 26 U.S.C. 501(c) that ''[make] expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity).'' 2 U.S.C. 441i(d)(1). (Organizations formed under 26 U.S.C. 501(c) are referred to as ''501(c) organizations'' below.) The ban also extends to political organizations exempt from taxation under 26 U.S.C. 527. These entities are defined in the Internal Revenue Code as parties, committees, associations, funds, or other organizations organized and operated primarily to directly or indirectly accept contributions and make expenditures for the ''exempt function'' of influencing or attempting to influence the selection, nomination, election or appointment of an individual to a Federal, State, or local public office, political organization office, or election of Presidential and

Vice Presidential electors. 26 U.S.C. 527(e)(1) and (2). BCRA excludes certain section 527 organizations from the prohibition: Political committees, State, district, and local party committees and the authorized committees of State and local candidates.

Again, the proposed rules track the statute. *See* proposed 11 CFR 300.11. A section 501(c) organization that ''makes expenditures or disbursements in connection with a Federal election'' is defined as an organization that operates, supports, finances, or controls a political committee, as defined under the Act, makes expenditures and disbursements in connection with Federal election activity, finances voter registration at any time, or finances voter guides, candidate surveys and candidate questionnaires that refer to one or more Federal candidates. *See* proposed 11 CFR 300.2(a). As explained above, the definition of ''Federal election activity'' would generally follow the statutory definition of that term. *See* proposed 11 CFR 100.24. This ban on party fundraising for certain tax-exempt organizations would ensure that national party committees could not direct non-Federal funds they formerly raised themselves to other organizations that engage in election activity that could directly or indirectly support Federal candidates.

The Commission requests comment on whether any other types of disbursements and expenditures by 501(c) organizations should bring those organizations within the proposed 11 CFR 300.12 prohibition and whether the prohibition should contain a temporal requirement. For example, should the prohibition encompass a 501(c) organization that has made disbursements and expenditures in connection with a Federal election at any time in the past, within the past three election cycles, within the past three years, or within some other time frame? The Commission also seeks comments on whether the rules should include additional guidance as to how a national party committee, or anyone else, could determine whether a particular 501(c) organization falls within the prohibition.

Comments are also sought as to whether a safe harbor provision should be provided for a national party committee that takes certain actions before fundraising for, or donating to, a 501(c) organization to determine that the organization does not engage in the election activity described? Examples of such actions could include: (1) A national party obtains a 501(c) organization's publicly available application for tax-exempt status or annual Form 990 tax returns and determines from that information that the organization has not reported making, or indicated plans to make, expenditures or disbursements in connection with a Federal election; or (2) with respect to future activity by a 501(c) organization or an organization that has applied for, but not yet obtained, tax-exempt status, obtains a certification from the organization indicating that it does not engage in or plan to engage in the type of election activity described.

Finally, the Commission seeks comment on what it means for a national party to ''direct donations.'' Pursuant to proposed 11 CFR 300.2(m), ''to direct'' a donation would mean to request, suggest, or recommend that another person donate something of value to a section 501(c) or section 527 organization. So construed, could a national party committee or its agent respond to an unsolicited request for information about organizations that share a party's political, social, or philosophical goals?

Please note that the proposed section 300.11 prohibition on national party fundraising for, and donating to, certain tax exempt organizations would extend to a broader group than the prohibition in proposed section 300.10 on non-Federal fundraising by national party committees. Both 300.10 and 300.11 apply to national party and national congressional committees, officers and agents acting on behalf of them, and entities indirectly or directly established, financed, maintained, or controlled by them. In accordance with the statute, the 300.11 prohibition would also apply to officers and agents acting on behalf of entities directly or indirectly established, financed, maintained, or controlled by national party and national congressional campaign committees, and to entities directly or indirectly established, financed, maintained, or controlled by an agent of national party or congressional campaign committees. As is the case for the proposed 11 CFR 300.10 prohibition, the Commission seeks comments on whether the final rules should provide examples of entities directly or indirectly established, financed, maintained, or controlled by an agent of national party or congressional campaign committees, as well as examples of officers and agents acting on behalf of them and of entities directly or indirectly established, financed, maintained, or controlled by an agent of national party committees or congressional campaign committees.

3. Proposed 11 CFR 300.12 Transition Rules

BCRA's prohibitions on non-Federal funds raised and spent by national parties become effective on November 6, 2002. Accordingly, through November 5, 2002, a national party can use funds in non-Federal accounts in any way permissible under current law. Beginning on November 6, 2002, national parties can no longer accept non-Federal funds. Non-Federal funds that remain in a national party's possession after the November 5, 2002 general election are covered by BCRA's transition rules. *See* 2 U.S.C. 431 note, section 402(b)(2). Under these rules, non-Federal funds received by a national party before November 6, 2002 must be used before January 1, 2003 solely to: (1) Retire outstanding non-Federal debts or non-Federal obligations incurred solely in connection with an election held before November 6, 2002; or (2) to pay non-Federal expenses or retire outstanding non-Federal debts or obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002. *See* 2 U.S.C. 431 note, section 402(b)(2)(B)(i) and (ii). These remaining non-Federal funds could not be used for building fund expenses or for outlays that would qualify as ''expenditures'' under the Act. Non-Federal funds contained in national party building fund accounts are treated separately and are described below. Non-Federal funds of State and local party committees would be covered by proposed 11 CFR part 300, subpart B.

The proposed transition rules governing the use of non-Federal funds remaining in a national party's possession, other than non-Federal funds contained in building funds, are set forth in 11 CFR 300.12(a) through (c). The proposed rules track the statutory language. In addition, the proposed rules would also indicate that current allocation regulations applicable to national party non-Federal accounts will remain in effect during the transition period. *See* proposed 11 CFR 300.12(d).

BCRA appears to restrict the use of excess non-Federal funds by national party committees to the specific purposes described above. It does not address what happens if national party committees have any non-Federal funds remaining after they have disbursed funds for those purposes. The Commission seeks comments as to whether any funds remaining may be disgorged to the United States Treasury or to a charitable organization or

whether they may be used in any other way.

BCRA treats non-Federal funds contained in national party building fund accounts more stringently. Under current law, funds in a national party building fund account can be used only for the purchase or construction of the national party committees' office building or facility. Beginning November 6, 2002, however, any funds remaining in a national party building fund account cannot be used for any building fund purposes. *See* 2 U.S.C. 431 note, 402(b)(2)(B)(iii). Hence, the proposed 11 CFR 300.12(e) would require any funds on deposit in such accounts on November 6, 2002 to be either disgorged to the United States Treasury or donated to an organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

4. Proposed 11 CFR 300.13 Reporting

BCRA requires national party committees, including national congressional campaign committees, and any subordinate committee of either, to report all receipts and disbursements during a reporting period. 2 U.S.C. 434(e). The proposed rules track the statutory language. *See* proposed 11 CFR 300.13(a). The Commission seeks comments on whether this provision is intended to require reporting by existing entities that currently are not required to report, and if so, the identification of such entities.

The proposed rules would also require national party committees to file termination reports for their non-Federal accounts to disclose the disposition of all non-Federal funds. *See* proposed 11 CFR 300.13(b). Proposed 11 CFR 300.13(c) identifies the current reporting regulations applicable to non-Federal accounts, including building funds, which will remain in effect to accomplish this.

5. Effect on Joint Fundraising Rules

The ban on national party non-Federal fundraising would affect the Commission's joint fundraising rules, found at 11 CFR 102.17 (FECA) and 11 CFR 9034.8 (Presidential Primary Matching Payment Act). The Commission is, therefore, proposing to add introductory language to each of these sections, advising readers that ''[n]othing in this section shall permit any person to solicit, receive, direct, transfer, or spend'' any non-Federal funds prohibited under 11 CFR part 300.

State, District, and Local Party Committee, and Organizations

While BCRA completely prohibits national party committees from receiving, soliciting, using, and transferring non-Federal funds after November 5, 2002, State, district, and local party committees and organizations may continue to solicit and use non-Federal funds, consistent with State law, for certain purposes. 2 U.S.C. 441i(b). Proposed 11 CFR part 300, subpart B, which is explained in more detail below, would implement the new statutory provisions governing these non-Federal funds that apply to State, district, and local party committees and party organizations that are not political committees under the FECA.

1. Proposed Revisions to 11 CFR 100.14 State, District, or Local Committee of a Political Party

The Levin Amendment, as set out in 2 U.S.C. 441i(b)(2), refers to ''State, district, and local committees of a political party.'' The Commission's regulations already define ''State committee'' and ''subordinate committee,'' and ''party committee.'' 11 CFR 100.14, 100.5(e)(4); *see also* 2 U.S.C. 431(15). The proposed rules that follow would amend section 100.14 to conform with the Levin Amendment, and to harmonize sections 11 CFR 100.14 and 100.5(e)(4).

In proposed paragraph (a), status as a State committee would be determined by reference to the party by-laws or State law, with an eye to limiting the definition to organizations that are part of ''the official party structure.'' This change would create a parallel with the current 11 CFR 100.5(e)(4), and would allow the proposed amended regulation to cover those States in which party committee status is a matter of State law and those in which it is a matter of party by-laws. There would also be a grammatical correction.

In proposed paragraph (b), there would be, in addition to a grammatical correction, the same change with regard to ''official party structure'' as in proposed paragraph (a), and the addition of the phrase, ''as determined by the Commission,'' to the end of the paragraph. This added language would standardize the treatment of ''State committees'' and ''subordinate committees'' in the section (existing paragraph (a) already includes this statutory phrase). The added language would also give the Commission the necessary authority and flexibility to ensure that district and local committees are treated consistently and fairly.

Proposed paragraph (c) would be a new provision defining ''district or local committee.'' This proposed definition would parallel proposed paragraph (a) but for political subdivisions below the State level, and would encompass those political party committees that do not necessarily operate formally under the ''control or direction'' of the State party committee. The key criterion for determining status as a district or local party committee would again be ''the official party structure,'' whether that is a matter of State law or the party's by-laws.

2. Proposed Revisions to 11 CFR 106.5

The creation of a new part 300 to cover all aspects of party committee activity has rendered considerable portions of present section 106.5 either outdated or duplicative. As presently constituted, the proposed revision of this section will state in broad terms the general principles that after December 31, 2002, (1) national party committees are no longer permitted to raise and spend non-Federal funds, and thus are unable to allocate expenses between Federal and non-Federal accounts, and (2) that State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections must either use only Federal funds for these purposes or must establish separate accounts and allocate expenditures between or among those accounts pursuant to the requirements of part 300. References to Levin activities and accounts have been added and references to specific sub-sections of part 300 are included in the draft revisions.

Although all references to ''exempt activities'' have been dropped from section 106.5, comments are solicited with regard to the relationship of such activities, as defined by 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), to the concept of ''Federal election activity'' in BCRA. Do these exempt activities remain separate allocable categories of State, district, and local party expenditures, or are they subsumed within ''voter registration,'' ''voter identification,'' ''get-out-the vote,'' and ''generic campaign activities'' now included in what are termed ''Levin activities'' in the proposed regulations? Would voter registration activity outside the time frame of 120 or fewer days before an election be an example of remaining ''exempt activity?'' Would solely volunteer participation in the distribution of campaign materials take

such activity out of ''Levin activity'' for purposes of the kinds of funds that would be permissible to make such expenditures?

As discussed below, allocation accounts might be retained as they appear at present section 106.5.

3. Proposed 11 CFR 300.30 Accounts

The Commission is considering whether or not to require State, district, and local party committees to maintain three separate accounts. These would include a Federal account to be used for both Federal and mixed Federal and non-Federal activities; a second account, known as a Levin account, to be used to meet Levin activities, i.e., certain costs of voter registration within a fixed time period, voter identification, GOTV, and generic campaign activity pursuant to proposed 11 CFR 300.32; and a third account to be used for State, district, and/or local activities. The perceived need for these three separate accounts is based upon BCRA's apparent separation of State, district, and local party campaign activity into three distinct categories for which there are three distinct sets of conditions as to the funds that may be used to pay for each type of activity.

Consequently, the proposed rules in this section have been written to require that State, district, and local party committees maintain these three separate accounts. Comments are sought, however, as to whether, in the alternative, accounting procedures designed to track Levin receipts, expenditures, and disbursements could be adequate for purposes of enforcing BCRA with respect to these types of Federal election activities. Comments are also sought as to whether the requirement of a third account would serve as an unnecessary administrative burden or would it in fact create an accounting aid for the committees affected? Would it be more appropriate to leave to each committee the decision of whether or not to set up a separate Levin account? Would it be reasonable to require State party committees to maintain a separate Levin account, but only to recommend that district and local party committees do the same? Would three separate accounts promote greater transparency?

The proposed regulations in section 300.30(a)(4) require that, in order for contributions to be deposited into a State, district, or local committee's Federal account, either the solicitation of the contributions must expressly state the committee's intent to use the contributions for Federal elections, or the solicitation must expressly state that only permissible contributions can be accepted into the Federal account, or the contributor must expressly designate the contribution for use in Federal elections. The Commission would presume that all contributions that meet these requirements, and are within the contribution limitations and prohibitions of the Act, may be deposited into the Federal account.

The proposed regulations in section 300.30(a)(8) state that Federal funds may be used for non-Federal election activities, provided that the contributors of the Federal funds have been informed that their contributions would be subject to the limitations and prohibitions of the Act and provided that the disbursements are reported pursuant to section 300.36. (*See, e.g.,* Advisory Opinion 2000–24 in which the Commission found the use of a non-Federal account to be permissive, not mandatory. *See also* the Explanation and Justification for revisions of the Commission's allocation regulations at 55 FR 26058 (June 26, 1990) and at 57 FR 8990, 8991 (March 13, 1992)).

The proposed regulations at section 300.30(b) provide that a State, district, and local committee would be permitted to deposit into its Levin account only those donations solicited and received for that account pursuant to proposed 11 CFR 300.31, and would have to use this account to make disbursements and expenditures only for the activities permitted by proposed 11 CFR 300.32 or for other, non-Federal activity permitted by State law. Comments are sought on whether this permission to use Levin funds for non-Federal activities is in keeping with the intent of BCRA.

In order for donations to be placed in the Levin account, either the solicitations for the donations would have to expressly state that donations will be subject to the special limitations and prohibitions of section 300.31, or there would have to be an express designation by the donors to the Levin account.

The proposed regulations in 11 CFR 300.30(c) would clarify that State, district, and local party committees would also be able to maintain a non-Federal account to be used for State, district, or local election activities.

The proposed regulations in section 300.30(a)(6) would continue the Commission's well-established requirement that State, district, and local party committees make all allocable expenditures and disbursements from their Federal accounts. Transfers into the Federal account from a non-Federal account of the non-Federal portions of allocable disbursements and expenditures would be permitted only within a specified period of time which is set out in 11 CFR 300.34. The same approach and time frame are being proposed for Levin activities with regard to the payment of non-Federal portions of Levin expenses.

As an alternative to using the Federal account for all Federal and mixed expenditures, the Commission could also continue to permit, but not require, State, district, and local party committees to establish separate allocation accounts for purposes of making allocated expenditures for administrative and/or Levin expenses. Comments are sought on whether allocation accounts should still be permitted and whether there should be a second, separate Levin allocation account for use in financing Levin activities.

4. Proposed 11 CFR 300.31 Receipt of Levin Funds

BCRA places several restrictions on how State, district, and local political party committees raise Levin funds. Proposed 11 CFR 300.31 would implement these restrictions. Proposed paragraph (a) would state as a general proposition a key point in the statute: a State, district, or local political party committee that spends Levin funds must raise those funds solely by itself. 2 U.S.C. 441i(b)(2)(B)(iv).

Proposed 300.31(b) would elaborate on the statutory requirement that Levin funds must be raised from donations that comply with the laws of the State in which the State, district, or local party committee is organized. 2 U.S.C. 441i(b)(2)(B)(iii). More specifically, proposed paragraph (c) would clarify the status of donations from sources that are permitted under State law, but prohibited by the Act. A prime example is donations from corporations and labor organizations. Under Section 441b of the Act, ''[i]t is unlawful * * * for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election'' for Federal office. 2 U.S.C. 441b(a). Under the campaign finance laws of several States, however, donations by corporations or labor organizations to political party committees are legal. Proposed 300.31(c) would clarify that in such States, a political party committee may solicit and accept donations of Levin funds from corporations and labor organizations, subject to the other conditions of the Act. (Of course, if donations from corporations or labor organizations to a political party committee are illegal in a State, political party committees in that State would not be able to accept Levin fund donations from those sources.)

Proposed paragraph (d) would address amount limitations on donations of Levin funds to a State, district, or local party committee. The Levin Amendment places a $10,000 per calendar year per donor limitation on donations to a State, district, and local political party committee intended for use as Levin funds. 2 U.S.C. 441i(b)(2)(B)(iii). Proposed paragraph (d)(1) would clarify that this is an aggregate limit per recipient committee (i.e., the aggregate limit applies separately to each party committee). *See* discussion of proposed 11 CFR 300.31(d)(3), below. The amount limitation applies to a person, including ''any person established, financed, maintained, or controlled by such person.'' The Commission seeks comment on whether its current ''affiliation'' regulation (11 CFR 100.5(g)) would appropriately determine whether a person is ''established, financed, maintained, or controlled,'' within the meaning of this proposed paragraph.

Proposed paragraph (d)(2) would address those cases where State law generally imposes an amount limitation on donations to a State, district, or local party committee that differs from the amount limitation in 2 U.S.C. 441i(b)(2)(B)(iii) and proposed paragraph (d)(1). Proposed paragraph (d)(2) would attempt to strike a balance between respect for State law and protecting the integrity of the Levin Amendment amount limitation. It would make clear that lower State law amount limitations control over the amount limitation in the Levin Amendment, but that the Levin Amendment amount limitation would control where State law amount limitations exceed the limitation in proposed paragraph (d)(1).

A question may arise as to whether State, district, and local committees of the same political party would be affiliated for purposes of applying the donation amount limitation in proposed paragraph (d)(1). *See generally* 11 CFR 110.3. Proposed paragraph (d)(3) addresses this issue. The proposed paragraph would clarify that such committees are not considered affiliated *only* for the purpose of determining compliance with proposed paragraph (d)(1). *See* 148 Cong. Rec. H410 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

The Levin Amendment restricts the manner in which State, district, and local political party committees may raise Levin funds. Proposed paragraph (e) would restate these restrictions, clarifying that the Commission's joint fundraising regulation, 11 CFR 102.17, does not otherwise sanction this activity. Proposed paragraph (f) would operate similarly in implementing the Levin Amendment's prohibition against joint fundraising of Levin funds by more than one State, district, or local committee of a political party, including such parties from more than one State. The final sentence of proposed paragraph (f) would clarify that the mere use of common vendors by two or more State, district, or local political party committees would not in and of itself constitute joint fundraising within the meaning of the proposed paragraph.

5. Proposed 11 CFR 300.32 Expenditures and Disbursements

Proposed 11 CFR part 300, subpart B would encompass political party committee expenditures and disbursements of Federal funds and of Levin funds. Proposed 11 CFR 300.32 would address both kinds of spending, and would clarify that BCRA does not affect spending of non-Federal funds for State or local political activity.

Proposed paragraph (a)(1) would clarify that spending by a State, district, or local political party committee ''for the purpose of influencing'' a Federal election (*see* 11 CFR 100.8) must use Federal funds; that is, nothing in BCRA changes the existing requirements for that type of spending. *See* 148 Cong. Rec. H409 (daily ed. February 13, 2002) (statement of Rep. Shays). In addition, this proposed paragraph would require that an association or similar group of candidates for State or local office, or an association of State or local officeholders, would have to make expenditures for Federal election activity solely with Federal funds. Comments are sought about whether or not this term should be further defined in the proposed regulations, and if so, about examples of such associations or groups to include in the regulations. Proposed paragraph (a)(2) would make clear that the general rule in BCRA is that a State, district, or local political party committee spending on Federal election activity must use Federal funds for that spending, except as provided in the Levin Amendment. 2 U.S.C. 441i(b)(1).

The proposed rules interpret BCRA as requiring that local party organizations that do not qualify as political committees are nonetheless subject to the requirement to use Federal funds for Federal election activity. (*See also* proposed 11 CFR 300.36(a) regarding recordkeeping for such local party organizations.) The Commission seeks comment on this interpretation and whether, alternatively, use of the term ''committee'' in 2 U.S.C. 441i(b)(1) should be read to exclude local party organizations which do not otherwise qualify as political committees under 2 U.S.C. 431(4).

Proposed paragraphs (a)(3) and (a)(4) would address the costs of fundraising, providing that a State, district, or local committee of a political party must use exclusively Federal funds to pay for all costs of raising funds for its Federal account and its Levin account. *See* 2 U.S.C. 441i(c). The Commission seeks comment on this interpretation of section 441i(c) with regard to Levin funds. In particular, the Commission seeks comment on (1) whether proposed paragraph (a)(4) could be limited to the direct costs (*see* current 11 CFR 106.5(a)(2)(ii)) of raising Levin funds; and (2) whether the costs of fundraising for Levin funds could be allocated between a party committee's Federal and non-Federal accounts under the ''funds received'' method. *See* current 11 CFR 106.5(f). Comments are also sought as to whether, generally, greater specificity should be provided in proposed section 300.32 as to the nature of fundraising costs in this section.

Proposed paragraph (b) would list the types of activities for which a State, district, or local political party committee may spend Levin funds in accordance with this proposed part. Proposed paragraph (b)(1) would spell out expressly the two kinds of Federal election activity for which Levin funds may be spent, *see* 2 U.S.C. 441i(b)(2)(A), and provide that such spending must be made subject to the conditions set out in proposed paragraph (c). Proposed paragraph (b)(2) would provide that a State, district, or local political party committee may also spend Levin funds for any purpose that is lawful under State law, and that such spending need not comply with proposed paragraph (c). (*See* below.) The Commission seeks comment on proposed paragraph (b)(2), specifically whether this broader use of Levin funds is within the intended scope of 2 U.S.C. 441i(b)(2)(A).

While the Levin Amendment would permit the spending of Levin funds as set out in proposed paragraph (b), it places restrictions and conditions on that spending when it is for Federal election activity. Proposed paragraph (c) would set out in one place important restrictions and conditions that are stated in different sections of BCRA. Proposed paragraph (c)(1) would implement the restriction that the Federal election activity paid for partly with Levin funds must not refer to a clearly identified Federal candidate. *See* 2 U.S.C. 441i(b)(2)(B)(i). Proposed paragraph (c)(2) would implement the restriction that the Federal election

activity paid for partly with Levin funds must not be for any broadcasting, cable, or satellite communications, other than a communication that refers solely to a clearly identified candidate for State or local office. *See* 2 U.S.C. 441i(b)(2)(B)(ii). Proposed paragraph (c)(4) would implement the Levin Amendment's requirement that spending under its authority must be allocated between Federal funds and Levin funds pursuant to the proposed regulation covering allocation. *See* 2 U.S.C. 441i(b)(2)(A)(i), (ii); *see* proposed 11 CFR 300.33, below. Finally, proposed paragraph (c)(3) would tie together the provisions of this proposed regulation with proposed 11 CFR 300.31 on raising Levin funds, above.

Proposed paragraph (d) would serve as a clarifying reminder that spending of non-Federal funds by a State, district, or local political party committee for State or local political activity, including the raising of solely non-Federal funds, remains a matter of State law. The proposed final sentence would clarify that a disbursement of non-Federal funds made under State law by a State, district, or local political party committee that is not directed by the disbursing committee for the purpose of influencing a Federal election or for Federal election activity shall not be an expenditure under 11 CFR 100.8 or an expenditure or disbursement for Federal election activity.

6. Proposed 11 CFR 300.33 Allocation of Expenses

Section 441i(b)(1) of Title 2, United States Code, states that State, district, and local party committees must make all disbursements and expenditures for Federal election activity from their Federal accounts. This requirement holds even when the expenses involved are also related to non-Federal election activity. Generally, the costs of mixed Federal and non-Federal election activities cannot be allocated between Federal and non-Federal accounts. The only exception to the rule against the use of non-Federal funds in connection with Federal election activity involves activities to be funded from a Levin account, pursuant to Section 441i(b)(2).

Section 441i(b)(2)(A) permits State, district, and local party committees, under certain conditions, to use Levin funds for particular categories of activity, including voter registration, voter identification, GOTV, and generic campaign activities, in connection with Federal and non-Federal elections. These funds must have been received pursuant to specific requirements, are to be used to meet expenses related to voter registration activity within 120 days of a Federal election and/or expenses related to voter identification, GOTV activities, and generic campaign activities when a Federal candidate appears on the ballot, and must be used in situations in which disbursements and expenditures for the permitted activities are allocated between a committee's Federal and Levin accounts. Section 441i(b)(2)(A) permits the use of Levin funds for these purposes ''to the extent that'' the costs of the activities are allocated. Thus, if a committee wishes to use other than Federal funds for such costs, it must allocate a portion to its Federal account.

Comments are sought with regard to the relationships between the activities for which Levin funds may be used and ''exempt activities'' as defined by 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18). In particular, information is requested on whether there remain exempt activities that should not be deemed ''Federal election activity.'' For example, would voter registration activity outside the time frame of 120 or fewer days before an election be an example of remaining ''exempt activity'' that would be allocable between Federal and non-Federal accounts (as opposed to Federal and Levin accounts), but that would not count as an ''expenditure'' for purposes of political committee status? In the alternative, should voter registration activity outside the 120-day time frame be considered 100% non-Federal activity?

With the exception of salaries, BCRA does not address administrative costs directly, either as a category of expenditures and disbursements or as allocable expenditures. BCRA defines ''Federal election activity'' at 2 U.S.C. 431(b)(20) as including specified categories of activity that do not include administrative costs.

With regard to salaries, BCRA, for purposes of defining ''Federal election activity,'' distinguishes between salaries paid those who spend more than 25% of their compensated time in any given month on activities in connection with Federal elections, who must be paid only with Federal funds, and those who do not spend that amount of time on these activities. Therefore, proposed section 300.33 would require State, district, and local committees to use only Federal funds to pay the salaries of those employees who spend more that 25% of their time in a particular month on activities in connection with Federal election activity. The proposed regulations also require that the salaries of those employees who spend 25% or less of their time in a given month on activities in connection with a Federal election be allocated between the committee's Federal and non-Federal accounts. Salaries of those employees who spend no time in a given month on activities in connection with a Federal election could be paid solely from the non-Federal account.

Comments are sought as to whether State, district, and local party committees should be permitted to pay the salaries of employees who spend 25% or less of their time on Federal election activity with non-Federal funds, rather than be required to allocate those payments. The 100% non-Federal alternative is not set out in the proposed rules. For purposes of administering the 25% rule for salary payments, comments are sought as to whether the proposed regulations should require that any of the following three alternative methods be used by State, district, and local party committees to document decisions as to the accounts from which all or portions of employees' salaries have been paid. First, employees could be required to keep contemporary time logs documenting their Federal and non-Federal activities. Secondly, employees could be required at the end of each month to certify in writing the percentage or amount of time spent on Federal election activity. Or, thirdly, a responsible party official could keep a monthly tally sheet for the all employees. Please note that none of these options appear in the proposed rules that follow.

In lieu of requiring 100% Federal payments for certain other administrative costs, the proposed rules would continue the Commission's policy of permitting the allocation of those costs between the Federal and non-Federal accounts of State, district, and local party committees, unless such expenses are directly attributable to a Federal candidate, in which case they would have to be paid only with Federal funds. Allocable administrative costs would include rent, office equipment (calculators, computers, copiers, facsimile machines, furniture), office supplies, postage for other than mass mailings, and utilities. Other allocable administrative costs would include routine building maintenance, upkeep and repairs.

Comments are requested regarding whether the Commission should continue requiring allocation of administrative costs other than certain salaries, if a committee desires to use some non-Federal funds for these purposes. BCRA requires certain Federal election activities, fundraising costs and certain salaries to be paid with Federal funds. As a result, significant amounts

of activity that were once allocable will have to be paid for exclusively with Federal funds. BCRA also delineates which Federal election activities may be allocated between Federal funds and Levin funds. The Commission seeks comments on whether administrative expenses that are not identified in BCRA have a significant enough impact on Federal elections to require continued allocation of such expenses, or whether a State, district, or local committee should be able to pay administrative expenses, other than certain salaries, with 100% non-Federal funds, depending upon applicable State law.

The proposed rules address the issue of appropriate minimum amounts of Federal funds to be required both for administrative expenses, when allocable, and for the Federal portions of costs of the specified Levin activities for which the use of non-Federal funds is also permitted. One goal of the allocation regulations are to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal or Levin funds. Another goal is to simplify the allocation process, in particular by establishing formulas that do not vary from State to State and that do not require measurements of time or space. Therefore, the proposed rules establish a fixed formula for all States that would vary only in terms of whether or not a Presidential campaign and/or a Senate campaign is to be held in a particular election year.

The following formulas have been derived by taking averages of the ballot composition-based allocation percentages reported by State party committees in four groupings of States selected for their diversities of size and geographic location and for the particular elections held in each state in 2000 and 2002. The groupings were: (1) Six states (Alabama, Colorado, Illinois, New Hampshire, Oklahoma, and Oregon) in which there was a Presidential but no Senate campaign in 2000; (2) 10 states (California, Delaware, Georgia, Florida, Michigan, New York, North Dakota, Texas, Vermont, and Wyoming) in which there were both a Presidential campaign and a Senate campaign in 2000; (3) six states (Delaware, Georgia, Michigan, Oklahoma, Texas and Wyoming) in which there will be a Senate campaign in 2002; and (4) six states (California, Florida, New York, North Dakota, Vermont and Washington) in which there will be no Senate campaign in 2002.

In 2000, the Federal percentages for the two parties in six States with only a Presidential campaign ranged from 20%–33.33%, with an average of 28%, while the Federal percentages for the two parties in ten States which held both Presidential and Senate campaign that year ranged from 30% to 43%, with an average of 36%. In 2002, the Federal percentages for the two parties in six States with a Senate campaign range from 20% to 25%, with an average of 21%, while the Federal percentages for the two parties in six States with no Senate campaign range from 11.11% to 16.67, with an average of 15%.

The proposed rules would apply the average percentages in each of the four groupings of States to all 50 states, resulting in the following proposed minimum percentages for Federal shares of administrative costs and for Federal shares of costs of the voter registration, voter identification, GOTV, and generic campaign activities permitted to be paid in part with Levin funds, pursuant to 2 U.S.C. 441i(b)(2):

(i) Presidential only election year—28% of costs
(ii) Presidential and Senate election year—36% of costs
(iii) Senate only election year—21% of costs
(iv) Non-Presidential and Non-Senate election year—15% of costs.

Comments are solicited as to whether a set percentage approach to allocation of both administrative and Levin expenses is preferable to a State-by-State ballot composition ratio approach, and as to whether the formula proposed by the Commission serves the purposes of the Act.

Voter registration activities undertaken 120 days or less before an election and no later than the election itself are included among the activities for which Levin funds may be used by State, district, and local party committees. The proposed regulations assume that activity outside this time frame would fall outside the general provisions of 2 U.S.C. 441i(b)(i), which prohibits the use of non-Federal funds for Federal election activities, including activities that are wholly or in part in connection with a Federal election. Therefore, the proposed regulations in 11 CFR 300.33(b)(3) state that the expenses of voter registration activity outside the 120-day time frame could be paid entirely with non-Federal funds or they could be allocated between Federal and non-Federal accounts.

In the alternative, the regulations could state that, because voter registration activities undertaken more than 120 days before an election would be outside the time frame for the use of Levin funds, the expenses for such activities would fall within the general provisions of 2 U.S.C. 441i(b)(i), which prohibits the use of non-Federal funds for Federal election activities, including activities that are wholly or in part in connection with a Federal election. Under this approach, expenses for voter registration activity outside the 120-day time frame would have to be paid entirely with Federal funds.

Comments are solicited as to which of these alternative approaches to expenses for voter registration activities more than 120 days before an election would most closely track the intent of BCRA.

The proposed regulations in 11 CFR 300.33(c) set out the categories of costs that may not be allocated. These include the costs of activities that refer to clearly identified Federal candidates, the costs of activities that refer to both Federal and State or local elections and certain fundraising costs.

Comments are sought as to whether fundraising costs would include a portion of a committee's overhead or only direct costs such as telephone banks, postage, printing, catering, banquet hall rental, and other such expenses related to a particular fundraising program. Comments are also sought as to whether costs related to raising funds only for non-Federal activity may be paid entirely from a non-Federal account.

The proposed regulations at 11 CFR 300.33(d) address the issue of transfers from a State, district, or local party committee's non-Federal account to cover the non-Federal portion of allocated administrative costs, and transfers from the committee's Levin account to meet that account's portion of the costs of allocated expenditures made pursuant to 2 U.S.C. 441i(b)(2). The proposed regulations employ the language of the present regulations at 11 CFR 106.5(g)(1)(i) and (2)(ii)(B), which require the use of the party committee's Federal account to pay the entire amounts of allocable expenses, with subsequent reimbursement by other accounts, and the limitation of such reimbursements to a set time frame of 10 days before and 60 days after the payment from the Federal account, unless a vendor requires an advance payment and the payment is based on a reasonable estimate. The proposed regulation continues the present rule's admonition at 11 CFR 106.5(g)(2)(B)(iii) that any payment outside this time frame, absent the need for an advance payment of a reasonably estimated amount, would result in the presumption of a loan of non-Federal funds to the Federal account and a violation of the Act.

7. Conforming Amendments to 11 CFR 104.10 and 106.1

A. Allocation of Expenses Among Candidates and Activities

Current section 104.10 addresses the reporting of expenses that are allocated among more than one clearly identified candidate (paragraph (a)) and expenses that are allocated among specific types of mixed Federal/non-Federal activities by political party committees and by separate segregated funds and nonconnected committees (paragraph (b)). However, BCRA has defined different categories of allocable expenses, including some of those areas falling within Federal election activity. Some of the allocable activity areas set out in current 11 CFR 106.5 (allocation of mixed Federal/non-Federal activities by party committees) are now subsumed by Federal election activity. In addition, under BCRA, mixed fundraising activity must be done with Federal funds, and the use of non-Federal funds by national party committee has been eliminated. Hence, the Commission proposes to divide the rules for reporting of allocable expenses into three sections: 11 CFR104.10 would apply to political committees that are separate segregated funds or nonconnected committees; new 11 CFR 104.17 would address administrative expenses and some other activities by political committees that are State, district, or local party committees; and new 11 CFR 300.36 would cover reporting of payments allocated between Federal funds and Levin funds.

BCRA has no impact on the support by separate segregated funds and nonconnected committees of one or more clearly identified Federal and non-Federal candidates or such committees' allocation of specific categories of mixed Federal/non-Federal activities. Thus, revised section 104.10(a), which addresses payments entailing combined expenditures and disbursements on behalf of more than one clearly identified Federal and non-Federal candidates, would be changed very little. It would be amended to clarify the type of committee subject to this section and would delete references to current section 106.5(g), which addresses non-Federal to Federal transfers made by party committees for the purpose of mixed payments.

In revised section 104.10(b), the references to the Senate and House campaign committees of a political party would be deleted. In the discussion of itemization of allocated disbursements for administrative and generic voter drive expenses at proposed paragraph (b)(1)(ii), the specific reference to the types of committees using the funds expended method would be deleted because all committees addressed in this regulation would use the funds expended method for those two allocation categories. References to exempt activities would be deleted because separate segregated funds and nonconnected committees do not engage in those activities. References to various paragraphs in 11 CFR 106.5, which currently pertains to party committees, would also be deleted.

B. Allocation of Expenses Between Candidates

Current section 106.1 addresses the allocation of expenses among more than one candidate. Paragraph (a)(1) sets out the general rule for allocation of an expenditure made on behalf of more than one clearly identified Federal candidate. It also addresses allocation of a payment involving both an expenditure made on behalf of one or more clearly identified Federal candidates and a disbursement on behalf of one or more non-Federal candidates. In view of the language of newly proposed section 300.33(c)(1), new language would be added to section 106.1(a)(1) making it clear that a party committee must only use Federal funds in both types of situations. *See also* newly proposed section 100.24(a)(3). Comments are requested as to whether the requirement that a State, district, or local party committee use only Federal funds for all payments made on behalf of both clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. (*See also* the narrative for newly proposed section 104.17 which addresses reporting of such activity by party committees.)

In view of the rearrangement and renumbering of the allocation reporting regulations, paragraph (a)(2) would be amended to conform to different section citations. It would also delete the citation to party committee transfer procedures in the event of a payment on behalf of clearly identified Federal and non-Federal candidates.

Paragraph (e) refers to allocation of activities that entail specific types of mixed Federal/non-Federal activity, other than payments on behalf of clearly identified candidates. The paragraph would be amended to conform to the new allocation categories and new allocation citation.

8. Proposed 11 CFR 300.34 Transfers

As explained above, the Levin Amendment permits spending on certain Federal election activity subject to certain restrictions and conditions, one of which is that the spending must be allocated between Levin funds and Federal funds. 2 U.S.C. 441i(b)(2)(A)(i), (ii). The Levin Amendment also requires that a State, district, or local committee must raise solely by itself all money spent under the Levin Amendment. 2 U.S.C. 441i(b)(2)(B)(iv). By the plain language of the last-cited provision, this restriction extends to the Federal funds component of the expenditure or disbursement allocated between Levin funds and Federal funds. *See* 148 Cong. Rec. H410 (daily ed. February 13, 2002) (Rep. Shays).

This provision of the Levin Amendment could cause confusion given the existing rule that party committees of the same political party may transfer Federal funds among themselves without limit on amount. *See* 11 CFR 102.6(a)(1)(ii). Proposed paragraph (a) of proposed section 300.34 would make clear that 11 CFR 102.6(a)(1)(ii) does not override the Levin Amendment as to transfers of Federal funds. Specifically, the committee must not use such transferred Federal funds to pay the Federal portion of Federal election activity that may be funded with a mixture of Federal funds and Levin funds under proposed 11 CFR 300.32 and 300.33. The Commission emphasizes that revisions to section 102.6(a) regarding transfers may be forthcoming in a future rulemaking to implement changes to 2 U.S.C. 441a(d) made by BCRA. The present discussion and this rulemaking extend only to Title I of BCRA. Pub L. 107–155, March 27, 2002. The proposed final sentence would state as a positive requirement that a State, district, or local political party committee that spends Levin funds must raise the Federal funds component of those funds by itself. As already mentioned above, the Levin Amendment imposes this fundraising requirement. 2 U.S.C. 441i(b)(2)(B)(iv).

In the same provision, the Levin Amendment specifically forbids certain transfers of Levin funds; that is, a State, district, or local party committee may not use as Levin funds any funds transferred to it by certain persons. 2 U.S.C. 441i(b)(2)(B)(iv)(I) through (IV). Proposed 11 CFR 300.34(b)(1) and (b)(2) would implement these transfer prohibitions by expressly identifying these persons.

9. Proposed 11 CFR 300.35 Office Buildings

BCRA repealed the provision at 2 U.S.C. 431(8)(B)(viii) exempting from the definition of contribution any donation of money or anything of value,

or loan, to a national or State party committee that is specifically designated to ''defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.'' In the technical amendments, however, Congress provided for the use of funds that were not subject to the limitations and prohibitions of the Act for the purchase or construction of a State or local party committee office building. This provision, which is an addition to the section on preemption at 2 U.S.C. 453, states: ''Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.'' 2 U.S.C. 453(b).

The current text of 11 CFR 114.1(a)(2)(ix) follows the repealed statutory provision and would be deleted and replaced with an annotated cross-reference to proposed new 11 CFR 300.35. The texts of the regulations currently at 11 CFR 100.7(b)(12) and 100.8(b)(13), which are similar to the current text of section 114.1(a)(2)(ix), would be deleted in a separate rulemaking that the Commission is publishing concurrently with this rulemaking. The receipt and use of funds for the purchase or construction of a national party committee's office building would be addressed in proposed section 300.10, which would allow only federal funds to be used for such purpose.

Proposed new section 300.35 would address four areas in implementing 2 U.S.C. 453(b)(1). First, it would provide for the application of State law to the activities, and would provide that generally Federal law will not preempt the application of State law. Second, it would explain the meaning of ''purchase or construction of a party office building.'' Third, it would provide that, if the funds are not used for the purpose as defined, they are to be treated as disbursements for other purposes and Federal law would apply. Finally, it would address the transitional requirements for the current State party office facility funds established under the repealed statutory section.

A. Application of State Law

Senator McConnell, the principal speaker in support of the technical amendments after their introduction in the Senate, described the party office building provision as ''[r]especting the primacy of State law in financing State and local party buildings.'' 148 Cong. Rec. S2339 (daily ed. March 22, 2002) (statement of Sen. McConnell). During floor debate prior to Senate passage of the main bill, in anticipation of the adoption of technical amendments, Senator Feingold described the proposal as providing that Federal law would no longer allow a State or local party committee to receive non-Federal donations to purchase or construct an office building where such donations violated State law, that State law governs the receipt and disbursement of non-Federal donations by State or local parties for such purpose, and that there is no ''required match consisting of Federal contributions.'' 148 Cong. Rec. S2143–2144 (daily ed. March 20, 2002) (statement of Sen. Feingold).

Paragraph (a) of proposed section 300.35 would set out the basic provision that funds raised outside the limits and prohibitions of the Act may be used, and that State law would govern whether they may be raised and used for the purchase or construction of a State or local party office building. Paragraph (a) would also incorporate language from the repealed statute and deleted regulations to the effect that the exemptions from Federal limits and prohibitions are premised on the idea that the building is not purchased or constructed for the purpose of any particular Federal candidacy. The building is being purchased or constructed for the functioning of the party, which entails the support of most or all of the party's candidates over a number of years; this concept did not change with the repeal of 2 U.S.C. 431(8)(B)(viii) and the enactment of 2 U.S.C. 453(b). The purchase or construction of the building for a particular Federal candidacy would entail the use of impermissible funds in a manner contrary to the basic purpose of the Federal law.

Paragraph (b) of section 300.35 would explain the coverage of State law. Paragraph (b)(1) would provide that Federal law will not preempt State law as to the non-Federal account activity, except where the funding does not fit the definition of the purchase or construction of an office building and would be another type of disbursement. Commission advisory opinions have addressed the question of whether the repealed contribution exemption, which permitted donations to a building fund from such Federally impermissible sources as corporations, preempted State law prohibitions on the use of such funds for campaign purposes. Advisory Opinions 2001–12, 1998–8, 1998–7, 1997–14, 1993–9, 1991–5, and 1986–40. The Commission stated in these opinions that Congress decided not to place restrictions on the subject even though it could have determined that the purchase of the facility was for the purpose of influencing a Federal election, that Congress took the affirmative step of deleting the receipt and disbursement of funds for such activity from the proscriptions of the Act, and that there was no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. Proposed new section 300.35, in effect, would supersede these Commission decisions as to Federal preemption with respect to the purchase or construction of an office building. Corporate donations and donations that would be excessive under Federal law may be used for the purchase or construction of a State party office building where State law permits (and this has been expanded to local party office buildings), but if the State law forbids corporate donations and donations in excess of a particular amount, Federal law would not preempt that law and such donations could not be made for that purpose.

Paragraph (b)(2) would provide that funds contributed to a Federal account that are then used to purchase or construct a State or local party office building must still comply with the limits and prohibitions of the Act. The committee's reports filed with the Commission would disclose the Federal account's receipts and disbursements that were used for the building purchase or construction as contributions received and disbursements made. Although this proposed section would address the use of Federal account funds, State law is the primary determinant as to the financing of these buildings and would still control whether such funds may be used. Thus, the Federal law would not preempt a State regulatory attempt to determine, using a reasonable accounting method, whether the Federal account funds used for the purchase or construction originated from contributions that would be impermissible or excessive under State law. Consistent with this State coverage, a State would be able to require the committees to file reports disclosing the Federal account's receipts and disbursements of funds used for the building purchase or construction. This would not entail a replication of the Federal reports; it would merely entail the disbursements for the activity covered by this section and the contributions that, under a reasonable

accounting method, were the source of such disbursements.

Although receipts and disbursements from the non-Federal accounts would have to be in compliance with State law, and both Federal and State law would apply to the permissibility of receipts and disbursements from the Federal account, proposed new section 300.35 would not contemplate a Commission enforcement action against a party committee for violating State law. Such an action, which would interpret and apply State law, would be the State's responsibility. Moreover, although the new provision would not require the establishment of a separate bank account or book account for the receipt and disbursement of funds for purchase or construction of the office building, Federal law would not preempt a State law requirement to establish such an account.

Under paragraph (b)(3), Levin funds would be usable for the purchase or construction of an office building provided that State law permits the use of such funds.

In accordance with these provisions as to the application of State law, current section 108.7(c), which lists types of State laws that are not superseded by the Act and the regulations, would be amended to include the application of State law to the purchase or construction of a State or local party office building in accordance with proposed section 300.35.

B. Definition of ''Purchase or Construction of an Office Building''

In view of the Commission's prior advisory opinions interpreting the scope of the repealed exception, it is necessary to delineate more precisely the scope of the activity covered under the new exception. In order to explain the scope of activities under which the funds would not be subject to the limitations and prohibitions of the Act (except for contributions to Federal accounts) and would be subject to State law, the proposed rules would define three terms: office building, purchase, and construction.

Section 453(b) of FECA refers to the purchase or construction of an ''office building'' rather than an ''office facility'' as found in the repealed section. The term ''building'' is a narrower term that indicates a more restricted range of covered expenses. In recent advisory opinions applying the repealed section, the Commission has stated that expenses that would be considered capital expenditures under the Internal Revenue Code would be payable from the building fund. *See* Advisory Opinions 2001–12, 2001–01, and 1998–7; *see also* 26 CFR 1.263(a)–(1) and 1.263(a)–(2). This has been interpreted by some to mean that the building fund may pay for the purchase of office machinery, equipment, and furniture. *See* Advisory Opinion 2001–12. The proposed rules interpret the use of the term ''building'' instead of ''facility'' as a basis for ensuring that this proposed section would not include what are more appropriately administrative expenses for the operation of the party, rather than the purchase or construction of an office building.

Specifically, proposed paragraph (c)(1) would ensure that items such as office equipment, machinery, and furniture would not be considered a part of the building and that the exemption afforded by this section would not extend to such payments; such payments would instead be allocable administrative expenses. The definition of ''building'' would extend only to the building itself and accompanying land, but this definition would not be meant to exclude a portion of the building, such as an office suite or one or more floors of a building, that a committee may purchase instead of an entire building. Although structural components and certain other fixtures, as described in proposed paragraph (c)(1), would not by themselves constitute a building, they would appear in the proposed regulation to convey the idea of what would be part of the building's structure, as opposed to the office equipment and machinery and similar items. The term ''structural component'' would be derived from the tax regulations, at 26 CFR 1.148–1; it would apply to such features as interior walls, floors, ceilings, windows, doors, stairwells and elevators, central air conditioning or heating systems, sprinkler systems, plumbing and plumbing fixtures, and electrical and data transmission wiring and lighting fixtures. There may be other fixtures that are not strictly ''structural components'' that are essential to the operation or appearance of the building. (*See* the discussion below as to when the installation of a significant number of structural components as part of a major restoration or renovation will qualify as construction of an office building.)

One particularly relevant illustration of the distinction between a structural component and an item that would not be part of the building pertains to audio-visual production facilities. Although a studio with special lighting, acoustical paneling, and special wiring in the walls may be built during the general construction of the building and would be considered part of the building, equipment such as recording equipment and cameras that are placed in the studio would not be part of the building's structure for the purposes of the proposed regulation.

The Commission seeks comment on whether the proposed definition of ''building'' should include, rather than explicitly exclude, items such as office equipment, machinery, or furniture. More generally, the Commission seeks comment on whether BCRA's use of the term ''building'' instead of ''facility'' contemplated a narrowing of the range of expenses falling within the exemption.

Proposed paragraph (c)(1) would also refer to the purpose of the party's use of the building, which is solely for its own party administration and election campaign support purposes. A party office building would not include floors or offices within the building or portions of the underlying land that are not used, or set aside for use, for party committee purposes. A party would be able to purchase a portion of a building such as a floor or suite to be its office building, but a party owning an entire building would not be able to rent or sell space in the building to others. The Commission seeks comment on whether a State or local party committee should be permitted to purchase an entire building and lease parts of it at fair market rates in order to generate income. In addition, the Commission seeks comment on whether the sources of the funds used to purchase or construct the office building should govern or guide the Commission in the determination of the lawful uses of such income. For example, would the purchase of a building with non-Federal funds require that the rental income generated be deposited in a non-Federal account and only used for non-Federal purposes? Would the purchase of the building with Federal funds allow rental income to be deposited in a Federal account and used for Federal purposes? What approach should be taken when revenue is generated from a building that was purchased with proceeds from a building fund that contains both Federal and non-Federal funds?

In the definition of ''purchase'' at proposed paragraph (c)(2), the payment to acquire the sole legal title would, of course, include down payments and mortgage payments. The proposed rule would draw from advisory opinions that limited the kinds of payments that would fall within the repealed exception. These opinions excluded payments for ongoing ''operating expenses'' such as property taxes and assessments (Advisory Opinion 1983–8)

or administrative expenses such as rent, building maintenance, utilities, and ''office equipment expenses.'' Advisory Opinions 2001–12, 2001–01 and 1988–12.

In defining ''construction,'' proposed paragraph (c)(3) would distinguish between expenses that constitute the erection of the building or the extensive renovation of a building on one hand, and costs for the upkeep, repair, or more piecemeal replacement of structural components. This distinction is derived from Advisory Opinion 1998–7 where the Commission, drawing from the tax code, distinguished the cost of incidental repairs that do not materially add to the property's value nor appreciably prolong its life, but ''keep it in an ordinary efficient operating condition'' from ''repair work [that] reaches a level to constitute wholesale restoration or renovation of a structure.'' The distinction may be illustrated by the following examples:

Example A—Expansion of the size of the building (*i.e,* changing the size or position of the outer perimeter of the structure) would constitute ''construction.''

Example B—A single large scale project (with a specific time deadline) entailing the replacement of a number of various structural components throughout the building to improve the building's habitability and function; for example, expanding, contracting, or altering the configuration of a significant number of rooms within the building coupled with replacements of a significant number of other structural components throughout the building such as installation of new electrical wiring throughout the building, and new climate control and plumbing systems would also constitute ''construction.''

Example C—The replacement on a periodic basis of structural components where such replacement is not part of a single large scale renovation project with a specific time deadline would not constitute ''construction'' under this section.

The definitions in proposed paragraph (c) may not include all of the possibilities for expenses for the purchase or construction of a party office building. In seeking comments on this proposed regulation, the Commission asks whether more examples should be included in what is or is not included in the particular sub-definitions, or whether the advisory opinion process would best serve that purpose. For example, should payments for a long-term lease with an option to purchase the rented building be included within the definition of purchase? More generally, the Commission seeks comment on what constitutes the purchase or construction of a party office building.

C. Office Building-Related Expenses Not Qualifying Under Proposed Paragraph (c)

An expense that is not included within the definition of the purchase or construction of an office building would most likely be an administrative expense of the party. Depending on the circumstances, such an expense may be support for a particular candidate or in some other category, rather than an administrative expense. If the expense is an administrative expense, it would be allocable under proposed 11 CFR 300.33 and a sufficient amount of Federal account funds would have to be used for the expense. In addition, the provisions of the Act would apply to the sources that are properly used for allocable expense purposes. The Commission notes that the portion of this NPRM describing the allocation rules at proposed section 300.33 asks for comments on whether administrative expenses should be allocable between Federal and non-Federal accounts, or whether such funds should be considered as entirely Federal or entirely non-Federal.

D. Transitional Provisions for State Party Building or Facility Account

Up to and including November 5, 2002, the funds in a State party office facility account can be used only for the purchase or construction of a State party office facility. Starting on November 6, those funds, if used for the purchase or construction of the office building, would be subject to State law, and State law may determine that the funds may not be used for that purpose, as would be provided in proposed new section 300.35. The proposed rule would also state what the funds may not be used for.

10. Proposed 11 CFR 300.36 Reporting Federal Election Activity; Recordkeeping

BCRA establishes certain reporting requirements for State, district, and local committees that finance Federal election activities. *See* 2 U.S.C. 434(e)(2). This requirement extends generally to all receipts and disbursements for Federal election activities if the aggregate amount of receipts and disbursements for such activity is $5,000 or more per calendar year, 2 U.S.C. 434(e)(2)(A), and specifically extends to receipts and disbursements of Levin funds. 2 U.S.C. 434(e)(2)(B). Because spending under the Levin Amendment is allocated between Federal funds and non-Federal funds not otherwise subject to the Act's prohibitions, limitation, and reporting requirements (*i.e.,* Levin funds), Congress has specifically required Federal disclosure of certain otherwise non-Federal receipts and disbursements of State, district, and local committees (*i.e.,* the Levin funds).

Proposed paragraph (a) of this section would apply to State, district, and local political party committees that have not qualified as political committees under 11 CFR 100.5. Although such an organization would not have reporting requirements under BCRA (*see* 2 U.S.C. 434(e)(2)), it would be required under proposed paragraph (a)(1) to demonstrate through a reasonable accounting method that it had sufficient Federal funds on hand to pay the required Federal portion of the costs of Federal election activity under proposed 11 CFR 300.32 and 300.33. Proposed paragraph (a)(1) would also require such a party organization to keep records of Federal receipts and disbursements and to make those records available to the Commission upon request.

Proposed paragraph (a)(2) would clarify that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, would constitute an expenditure, within the meaning of 11 CFR 100.8, unless an exclusion from the definition of expenditure in 11 CFR 100.8(b) applies. Thus, such payments would constitute expenditures for purposes of determining whether or not a State, district, or local political party organization becomes a political committee, under 11 CFR 100.5. The Commission seeks comment on this interpretation and whether, alternatively, disbursements for Federal election activity that do not otherwise qualify as ''expenditures'' or ''exempt activities'' should be excluded from the threshold for determining political committee status. Proposed paragraph (a)(2) would also state that a payment of Federal funds for the costs of Federal election activity, or for the Federally allocated portion of the costs of Federal election activity, that meets the definition of ''exempt activities'' (*see* 11 CFR 100.8(b)(10), (16), and (18)) would be treated as exempt activities in accordance with applicable provisions of the current (*i.e.,* pre-BCRA) regulations.

Proposed paragraph (b) of proposed section 300.36 would apply to State, district, and local political party committees that have qualified as political committees under 11 CFR

100.5. Proposed paragraph (b)(1) would provide that such committees must report all receipts and disbursements of Federal funds for all or part of the costs of Federal election activity. Proposed paragraph (b)(1) would go on to state that this requirement holds even if the committee has less than $5,000 of aggregate receipts and disbursements for Federal election activity. *See* 2 U.S.C. 434(e)(2)(A). The final sentence of proposed paragraph (b)(1) would provide that a disbursement of Federal funds for the costs of, or for the Federally allocated portion of the costs of, Federal election activity is reportable as an expenditure, unless an exclusion in 11 CFR 100.8(b) applies.

Proposed paragraph (b)(2) would implement the broader reporting provisions of 2 U.S.C. 434(e)(2)(A) and (B). The proposed first sentence would state the basic rule that all receipts and disbursements for Federal election activity must be reported if the political committee has had an aggregate of $5,000 or more of such receipts and disbursements in a calendar year. The proposed second sentence would make it clear that this basic reporting rule extends to the otherwise non-Federal funds spent for Federal election activity under the Levin Amendment (that is, to the Levin funds).

Proposed paragraph (b)(2)(i) would spell out the requirements for reporting payments for the costs of Federal election activity that are allocated between Federal funds and Levin funds. It would identify certain information, such as name, address, amount, and description of purpose, which must be provided for each reportable payment. Proposed paragraph (b)(2)(i) would require activity-by-activity itemization of a reportable payment that covers the costs of more than one Federal election activity. Proposed paragraph (b)(2)(ii) would implement BCRA's itemization provision for receipts and disbursements to or from any person of more than $200 in a calendar year. *See* 2 U.S.C. 434(e)(3).

Proposed paragraph (b)(3) is intended to alert the reader to the rules for reporting payments allocated between Federal funds and non-Federal funds that are not covered in proposed paragraph (b)(2). As explained above, proposed paragraph (b)(2) would apply only to payments for Federal election activity allocated between Federal funds and Levin funds under proposed 11 CFR 300.33. The reporting regulation for other payments allocated between Federal funds and non-Federal funds would be contained in proposed new 11 CFR 104.17. For example, section 104.17 would address reporting of administrative expenses and salaries of employees who spend 25% of their time, or less, on Federal elections.

Proposed paragraph (c) would implement BCRA's new requirement for monthly filing by party committees that come under new section 434(e) of the Act. This would be accomplished by referring to the Commission's existing regulation specifying monthly reporting, i.e., 11 CFR 104.5(c)(3). The Commission seeks comments on the applicability of the $50,000 annual threshold for electronic filing to receipts and disbursements for Federal election activities. *See* 11 CFR 104.18.

Finally, proposed paragraph (d) would support the disclosure provisions outlined above by adding a recordkeeping requirement. This would be accomplished by referring to the Commission's existing regulation on recordkeeping, 11 CFR 104.14. This requirement is necessary to ensure that sufficient documentation exists to ensure compliance with the disclosure provisions of BCRA.

With regard to reporting and recordkeeping, the Commission seeks comments about what, if any, reporting requirements an association or similar group of candidates for, or holders of, State and local office (*see* 2 U.S.C. 441i(b)(1)) that is not a political committee has under 2 U.S.C. 434(e)(2).

11. Proposed 104.17 Reporting of Allocable Expenses by Party Committees

As indicated in the description of section 104.10, the proposed rules would divide the present regulations at that section into several regulations to cover reporting of specific allocation areas by specific types of reporting entities. New section 104.17, which is currently reserved space, would address reporting by party committees of allocable expenses. Reporting requirements with regard to activity allocated between Federal and Levin accounts pursuant to 11 CFR 300.30 and 11 CFR 300.33 are also addressed in 11 CFR 300.36.

Proposed 11 CFR 104.17(a) would address payments on behalf of more than one clearly identified candidate, including non-Federal candidates. Current section 104.10 provides for allocated Federal/non-Federal spending when a combined payment is made on behalf of both Federal and non-Federal clearly identified candidates. Under BCRA and as provided in the proposed revisions of section 106.1(a), however, it appears that all such payments must be made entirely from Federal funds. Hence, proposed 11 CFR 104.17(a) would provide for the reporting of all allocations between or among clearly identified Federal and non-Federal candidates as Federal activity. Comments are solicited as to whether this requirement that State, district and local committees of political parties use Federal funds for activity on behalf of clearly identified Federal and clearly identified non-Federal candidates is appropriate under BCRA. (*See also* 11 CFR 300.30).

Proposed 11 CFR 104.17(b)(1) would require explanations of the percentages used to allocate payments for specific categories of State, district and local party activity. The Commission is also contemplating requiring the assignment of unique identifying codes to some allocable activities as is required in current 11 CFR 104.10(b)(2). (For example, the reporting of exempt costs now requires such identifiers.) Comments are sought as to whether such unique identifying codes for activities would be of utility in tracking any of the allocable expenditures for activities. Also, should activities that have been included under exempt costs (now apparently subsumed by other categories) require such identifiers?

Proposed 11 CFR 104.17(b)(2) would address the reporting of transfers between State, district and local party accounts for allocable expenses, while proposed 11 CFR 104.17(b)(3) would set out the details required in the reporting of disbursements for allocable activity by State, district and local committees of political parties.

12. Proposed 11 CFR 300.37 Prohibitions on Fundraising for and Donating to Certain Tax Exempt Organizations

Just as it prohibits national parties from fundraising for, or making or directing donations to, certain tax exempt organizations, BCRA also prohibits State, district, and local party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, maintained, financed, or controlled by them from doing so. 2 U.S.C. 441i(d)(i). Thus, the proposed rules at 11 CFR 300.37 relating to State, district, and local party committees would mirror the proposed rules at 11 CFR 300.11 relating to national party committees. *See* discussion above.

The Commission seeks comments on one component of the proposed rules as they apply to State, district, and local party committees. Proposed 11 CFR 300.37(a)(3), like proposed 11 CFR 300.11(a)(3), would mirror 2 U.S.C. 441i(d) in extending the prohibition on fundraising for, or donating to, section 527 organizations ''except for a political committee; a State, district, or local

committee of a political party; or the authorized campaign committee of a State or local candidate.'' The proposed rules would interpret ''political committee'' as it is currently defined in 11 CFR 100.5. Under this construction, State, district, and local party committees could fundraise for, or donate to, a section 527 organization that is a Federal political committee under the Act, but they could not do so for a section 527 organization that is a State-registered political action committee (''PAC'') that supports only non-Federal candidates. The Commission seeks comment as to whether another interpretation of ''political committee'' is warranted that would permit State, district, and local party committees to donate to this type of State-registered section 527 organization.

Tax-Exempt Organizations

For the convenience of readers interested in locating rules pertaining to fundraising and donations to tax-exempt organizations, subpart C of new part 300 would combine in a single place the prohibitions on national, State, district, and local party committee donations to, and fundraising for, certain 501(c) and 527 tax-exempt organizations and the rules governing fundraising by Federal candidates and officeholders for 501(c) organizations. Proposed 11 CFR 300.50 would mirror proposed rule 11 CFR 300.11. Proposed 11 CFR 300.51 would mirror proposed rule 300.37. Proposed 11 CFR 300.52 would mirror proposed 11 CFR 300.65. *See* the discussion in proposed 11 CFR 300.11 and 300.37 above and 300.65 below.

Federal Candidates and Officeholders

BCRA places limits on the amounts and types of funds that can be raised by Federal candidates and officeholders for both Federal and State candidates. *See* 2 U.S.C. 441i(e). The Commission is proposing to place the regulations that address these limitations in 11 CFR part 300, subpart D.

1. General Prohibitions

The restrictions apply to Federal candidates and officeholders, their agents, and entities directly or indirectly established, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s). As defined in 2 U.S.C. 431(3) and existing 11 CFR 100.4, ''Federal office'' means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States. There is a similar definition of ''Federal officeholder'' in 11 CFR 113.1(c). Please note that these restrictions encompass candidate PACs and leadership PACs. Persons covered by these restrictions may not ''solicit, receive, direct, transfer or spend'' non-Federal funds unless certain requirements are satisfied.

BCRA prohibits any Federal candidate or officeholder, his or her agent, or any entity described above, from raising non-Federal funds in connection with an election for Federal, State, or local office. 2 U.S.C. 441i(e)(1)(A) and (B); proposed 11 CFR 300.61. These prohibitions encompass raising money for section 527 organizations, whether or not such organizations are Federal political committees. With limited exceptions, such persons may raise and spend Federal money in connection with a non-Federal election only in amounts and from sources that are consistent with State law, and that do not exceed the Act's contribution limits or come from prohibited sources under the Act. 2 U.S.C. 441i(e)(1)(B); proposed 11 CFR 300.62.

The prohibitions in 11 CFR 300.61 and 300.62 encompass ''leadership'' and ''candidate'' PACs since these PACs are entities directly or indirectly established, financed, maintained, or controlled by, Federal candidates and/or officeholders. Specifically, leadership PACs and candidate PACs are political organizations set up by congressional leaders and other Federal candidates and officeholders as a way to support other candidates' campaigns. In 2001, at least 110 members of Congress had leadership PACs.

As Senator McCain explained in the Senate debate, ''A Federal officeholder or candidate is prohibited from soliciting contributions for a Leadership PAC that do not comply with the Federal hard money source and amount limitations.'' *See* 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain). Consequently, under proposed 11 CFR 300.61, Federal candidates, Federal officeholders, and their leadership PACs and candidate PACs cannot solicit, receive, direct, transfer, or spend funds for a Federal account of a leadership or candidate PAC unless the funds are subject to the prohibitions, limitations, and reporting requirements of the Act. Similarly, Federal candidates, Federal officeholders, and their leadership PACs and candidate PACs cannot solicit, receive, direct, transfer, or spend funds for a non-Federal account of a leadership PAC or candidate PAC unless the funds are subject to the prohibitions and limitations of the Act. Thus, neither the Federal nor non-Federal accounts of a Federal candidate's leadership PAC or candidate PAC could receive or spend corporate treasury or labor organization funds or funds from individuals and political committees that exceed the limitations of the Act. Additionally, funds in the non-Federal account of these PACs must not be used for Federal election activities or in connection with a Federal election. *See* 148 Cong. Rec. S2140 (Daily ed. March 20, 2002) (statement of Sen. McCain).

2. Exceptions for State and Local Candidates and for Fundraising Events

An exception applies when a Federal candidate or Federal officeholder is also a candidate for State or local office. Such candidates may raise and spend non-Federal funds for their State campaign, as long as their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both. 2 U.S.C. 441i(e)(2); proposed 11 CFR 300.63. Please note that if a State or local candidate is simultaneously a candidate for Federal office, he or she must raise and spend only Federal funds in connection with the Federal campaign.

BCRA contains a further exemption, for Federal candidates and officeholders who attend, speak, or appear as a featured guest at a State, district, or local party committee fundraising event. *See* 2 U.S.C. 441i(e)(3); proposed 11 CFR 300.64. The Commission seeks comment on how it should construe and implement this provision, particularly in light of the separate general prohibition on Federal candidates and officeholders from soliciting non-Federal funds in connection with an election for Federal, State, or local office.

Sen. McCain explained in the Senate debate that ''[t]he rule here is simple: Federal candidates and officeholders cannot solicit soft money funds, funds that do not comply with Federal contribution limits and source prohibitions, for any party committee—national, State, or local.'' 148 Cong. Rec. S2139 (daily ed. March 20, 2002) (statement of Sen. McCain). Thus, under the proposed rules, while such individuals may attend, speak, or be a featured guest at a State or local party fundraising event, they cannot solicit funds at any such event.

However, the Commission seeks comments on whether the fundraising event provision is a total exemption from the general solicitation ban, whereby Federal candidates and officeholders and their agents may attend and speak freely at such events without restriction or regulation. In

addition, the Commission seeks comments on how it should construe BCRA's phrase permitting Federal candidates and officeholders to ''attend, speak, or be a featured guest'' at a fundraising event. Specifically, the phrase ''featured guest'' strongly suggests that State, district, or local party committees may publicize in advance that a Federal candidate or officeholder will be attending and speaking at an event. Does this mean that Federal candidates and officeholders may be referred to in invitation materials for the event? May they appear as members of a host committee of an event? May they be honored at the event? Should the general solicitation bar be construed to mean that Federal candidates and officeholders are strictly prohibited from doing anything that would constitute a ''solicitation'' under the Internal Revenue Code that would trigger IRS disclaimer obligations?

3. Exception for Tax-Exempt Organizations

BCRA also addresses solicitations on behalf of 501(c) organizations that are made by Federal candidates, Federal officeholders, and individuals who are agents of either. 2 U.S.C. 441i(e)(4). BCRA makes clear that these individuals may make general solicitations on behalf of 501(c) organizations, without regard to the source or amount solicited, as long as the solicitation does not specify how the funds will or should be spent and as long as the solicitation is not for a 501(c) organization whose principal purpose is to conduct certain Federal election activity as described in 11 CFR 300.2(a), such as voter registration, voter identification, GOTV activities, or generic campaign activity. BCRA prohibits these individuals from specifically soliciting funds for the above-described Federal election activity, or for 501(c) organizations whose principal purpose is to conduct those Federal election activities, unless the solicitation is made to an individual and the amount solicited does not exceed $20,000 per year. No solicitations may be made on behalf of 501(c) organizations for funds to use for public communications that refer to a clearly identified Federal candidate and that promote, support, attack, or oppose the candidate. *See* 148 Cong. Rec. H408 (daily ed. February 13, 2002) (statement of Rep. Shays). Thus, for example, a Federal candidate may make a general solicitation to a corporation or labor organization on behalf of the Red Cross, but may not solicit a corporation or labor organization for GOTV activities conducted by a 501(c)(4) organization. These provisions also apply to organizations that have applied for 501(c) tax exempt status, where the application is still pending. The proposed rules track these provisions. *See* 11 CFR 300.65.

The BCRA provision relating to candidate/officeholder solicitations on behalf of 501(c) organizations specifically applies only to individuals described in 2 U.S.C. 441i(e)(1). Section 441i(e)(1) of FECA applies to Federal candidates, individual holding Federal office, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of either Federal candidates and Federal officeholders. Thus, the proposed rules construe BCRA to permit only individuals to make the solicitations—that is, Federal candidates, Federal officeholders, and individuals acting as their agents. An entity acting as a candidate's agent or an entity directly or indirectly established, financed, maintained, or controlled by a candidate could not make these general or specific solicitations on behalf of a 501(c) organization. However, the Commission seeks comments as to whether another interpretation is warranted.

The Commission also notes that the language encompassing an ''agent'' of Federal candidates and officeholders in Section 441i(e)(1), unlike the ''agent'' language in Sections 441i(a)(2) and 441i(d), does not include the limiting phrase, ''agent acting on behalf of.'' The Commission seeks comment as to whether Section 441i(e)(1) should be similarly construed as applying to an agent acting on behalf of a Federal candidate or officeholder or whether the absence of this limiting language was intended to confer a different meaning on the use of the term ''agent'' in this provision.

The Commission also seeks comments on whether the proposed rules should address how to identify organizations whose principal purpose is to conduct the described Federal election activity. Should a 501(c) organization's major activities, as identified in publicly available information such as its application for tax-exempt status or annual Form 990 tax returns, be used to determine whether an organization's principal purpose is to conduct Federal election activity? Although those publicly available tax forms would reveal the past major activities of an organization or the major activities planned by the organization at the time it applied for tax exempt status, additional information would be needed to determine the principal purpose of an organization that has applied for, but not yet obtained, tax exempt status, and to ascertain the current major activities of a 501(c) organization. Thus, should Federal candidates and officeholders be required to obtain a certification from an organization on whose behalf the candidate or officeholder wants to solicit funds that its principal purpose is not to conduct the described Federal election activity? Should the rules include a knowledge standard prohibiting solicitations for unlimited funds from any source if a Federal candidate, Federal officeholder, or individual acting on their behalf has knowledge that an organization is planning to conduct the described Federal election activity?

Finally, the Commission seeks comments on whether the rules should further address a Federal candidate's or Federal officeholder's responsibility when specifically soliciting individuals for funds for a 501(c) organization to use in conducting Federal election activity. For example, if a Federal candidate is soliciting a donation of $20,000 from an individual who serves as the CEO of a major corporation, should the candidate be required to inform the individual that personal funds are being solicited and not funds from the individual's corporation?

Communications by State and Local Candidates

Proposed Subpart E would implement two provisions of BCRA regarding State and local candidates. BCRA prohibits State and local candidates and officeholders from funding certain public communications with non-Federal funds. *See* 2 U.S.C. 441i(f)(1); proposed 11 CFR 300.71. They may, however, use Federal funds for these communications. The prohibition on use of non-Federal funds encompasses communications that refer to a clearly identified candidate for Federal office, if the communication promotes, supports, attacks, or opposes any candidate for that Federal office, regardless of whether the communication expressly advocates voting for or against any candidate.

In addition, BCRA contains an exception that permits State and local candidates to use non-Federal funds for communications that merely refer to Federal candidates in another context. 2 U.S.C. 441i(f)(2); proposed 11 CFR 300.72. For example, State and local candidates may note that they have been endorsed by Federal candidates, or that they agree or disagree with a Federal candidate's position on a certain issue. *See* 148 Cong. Rec. S2142–43 (daily ed. March 20, 2002) (statement of Sen.

Feingold). They would also be able to use non-Federal funds to refer to a bill or law by its popular name where that name happens to include the name of a Federal candidate. These examples are included in proposed 11 CFR 300.2(l)(ii), the definition of ''promote, support, attack, or oppose,'' which is cross-referenced in proposed 11 CFR 300.72.

A State or local candidate or officeholder may also use non-Federal funds for communications made in connection with an election for State or local office, that refer only to the sponsoring individual or to any other candidate for the State or local office held or sought by that individual, or both. *Id.*

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601, and the number of other small entities to which the rules would apply is not substantial.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 108

Elections, reporting and recordkeeping.

11 CFR Part 110

Campaigns, political parties and committees.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

For reasons set out in the preamble, Subchapters A, B and F of Chapter I of title 11 of the *Code of Federal Regulations* would be amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 would continue to read as follows:

Authority: 2 U.S.C. 431; 434(a)(11), 438(a)(8).

2. Section 100.14 would be revisied to read as follows:

§ 100.14 State committee, subordinate committee, district, or local committee (2 U.S.C. 431(15)).

(a) *State committee* means the organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the State level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission.

(b) *Subordinate committee of a State committee* means any organization that is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, as determined by the Commission.

(c) *District or local committee* means any organization that by virtue of the bylaws of a political party or the operation of State law is part of the official party structure, and is responsible, under State law, for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State, including an entity that is directly or indirectly established, financed, maintained, or controlled by the district or local committee, as determined by the Commission.

3. Section 100.24 would be added to read as follows:

§ 100.24 Federal election activity (2 U.S.C. 431(20)).

(a) *Federal election activity* means—

(1) Voter registration activity during the period that begins on the date that is 120 calendar days before the date that a regularly scheduled Federal election is held and ends on the date of the election. For purposes of voter registration activity, the term ''election'' does not include any special election;

(2) The following activities conducted in connection with an election in which one or more candidates for Federal office appears on the ballot (regardless of whether one or more candidates for State or local office also appears on the ballot):

(i) Voter identification, including canvassing, and other activities designed to determine registered voters, likely voters, or voters indicating a preference for a specific candidate or political party; or

(ii) Generic campaign activity, as defined in 11 CFR 100.25;

(iii) Get-out-the-vote activity. Examples of get-out-the-vote activity include transporting voters to the polls, contacting voters on election day or shortly before to encourage voting but without referring to any clearly identified candidate for Federal office, and distributing printed slate cards, sample ballots, palm cards, or other printed listing(s) of three or more candidates for any public office;

(3) A public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified and that promotes, supports, attacks, or opposes any candidate for Federal office. This paragraph applies regardless of whether the communication expressly advocates a vote for or against a Federal candidate; or

(4) Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(b) *Exceptions. Federal election activity* does not include any amount expended or disbursed by a State, district, or local committee of a political party for:

(1) A public communication that refers solely to one or more clearly identified candidates for State and local office. This exception does not apply to a public communication that is voter registration activity, voter identification, generic campaign activity, or get-out-the-vote activity under paragraphs (a)(1) or (a)(2) of this section;

(2) A contribution to a candidate for State or local office, provided the contribution is not designated to pay for

voter registration activity, voter identification, generic campaign activity, get-out-the-vote activity, or a public communication as set forth in paragraphs (a)(1) through (4) of this section;

(3) The costs of a State, district, or local political convention or other similar meeting or conference;

(4) The costs of grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters and yard signs, that name or depict only candidates for State or local office;

(5) Voter registration activity at any time other than the period of time that is 120 days before the date that a regularly scheduled Federal election is held through the date of the election; and

(6) Get-out-the-vote and voter identification activities in elections in which no candidate for Federal office appears on the ballot.

4. Section 100.25 would be added to read as follows:

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a campaign activity that promotes or opposes a political party and does not promote or oppose a Federal candidate or a non-Federal candidate.

5. Section 100.26 would be added to read as follows:

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.

6. Section 100.27 would be added to read as follows:

§ 100.27 Mass mailing (2 U.S.C. 431(23)).

Mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this section, substantially similar means communications that have been personalized to include the recipient's name, occupation, geographic location, or similar types of individualization.

7. Section 100.28 would be added to read as follows:

§ 100.28 Telephone bank (2 U.S.C. 431(24)).

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. For purposes of this section, *substantially similar* means communications that have been personalized to include the recipient's name, occupation, geographic location, or similar types of individualization.

§§ 100.29–100.50 [Added and Reserved]

8. Sections 100.29 through 100.50 would be added and reserved.

9. Sections 100.1 through 100.50 would be designated as subpart A—General Definitions, and Subpart B would be added and reserved.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

10. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

11. Section 102.5 would be revised to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.

(a) *Organizations that are political committees under the Act, other than National Party committees.*

(1) Each organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district, and local party committees by 11 CFR part 300. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR 300.34 and 106.6(e). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR part 106 between such Federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-Federal elections. Administrative expenses for State, district, and local party committees are subject to 11 CFR part 300; or

(ii) Establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting the conditions set forth in paragraphs (a)(2)(i), (ii), or (iii) of this section may be deposited in a Federal account established under 11 CFR 102.5(a)(1)(i) or may be received by a political committee established under 11 CFR 102.5(a)(1)(ii).

(i) Contributions designated for the Federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election; or

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(3) Any party committee solicitation that makes reference to a Federal candidate or a Federal election shall be presumed to be for the purpose of influencing a Federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for Federal election purposes.

(b) *Organizations that are not political committees under the Act.* Any organization that makes contributions or expenditures but does not qualify as a political committee under 11 CFR 100.5, including any State, district, or local party organization that makes contributions, expenditures and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 11 CFR 100.8(b)(10), (16) and (18), or payments for certain Federal election activities under 11 CFR 300.32(b), shall either:

(1) Establish separate accounts to which only funds subject to the prohibitions and limitations of the Act, and only funds solicited for activities undertaken pursuant to 11 CFR 300.32, shall be deposited and from which contributions, expenditures, exempted payments, and payments for certain

Federal activities shall be made. Such organization shall keep records of deposits to and disbursements from such accounts and, upon request, shall make such records available for examination by the Commission; or

(2) Demonstrate through a reasonable accounting method that whenever such organization makes a contribution, expenditure, exempted payment or payment for certain Federal election activities, that organization has received sufficient funds subject to the limitations and prohibitions of the Act or to the requirements of 11 CFR 300.31 to make such contribution, expenditure or payment. Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records available for examination by the Commission.

(c) *National party committees.* National party committees are prohibited from raising and spending non-Federal funds. Therefore, these committees are not included in this section.

12. Section 102.17 would be amended by adding introductory language to paragraph (a) to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* Nothing in this section shall permit any person to solicit, receive, direct, transfer, or spend any non-Federal funds prohibited under 11 CFR part 300.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

13. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

14. Section 104.8 would be amended by revising paragraphs (e) and (f) to read as follows:

§ 104.8 Uniform reporting of receipts.

* * * * *

(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s).

This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

15. Section 104.9 would be amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 104.9 Uniform reporting of disbursements.

* * * * *

(c) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-Federal account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, purpose means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(d) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, purpose means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(e) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B each transfer from their non-Federal account(s) to the non-Federal account(s) of a State or local party committee.

16. Section 104.10 would be revised to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR 106.1. Payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates shall also be allocated pursuant to 11 CFR 106.1. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), as appropriate, but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal*

and non-Federal candidates. A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and generic voter drives according to 11 CFR 106.6, as appropriate, and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), and the manner in which it was derived.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the Federal and non-Federal accounts that year, to date, for each such category.

(B) The committees shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific State and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising.* In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

17. Part 104 would be amended by adding section 104.17 to read as follows:

§ 104.17 Reporting of allocable expenses by party committees.

(a) *Expenses allocated among candidates.* A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates pursuant to 11 CFR 106.1. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates pursuant to 11 CFR 106.1. A State, district or local party committee making expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named

candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate.

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing an expenditure and/or disbursement that reflects payments on behalf of one or more Federal candidates and/or on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, and shall state and explain the manner in which the percentage of costs applied to each candidate was derived, pursuant to 11 CFR 106.1. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) *Recordkeeping.* The treasurer must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A State, district or local committee of a political party that has established separate Federal and Levin accounts under 11 CFR 300.30 must report, pursuant to 11 CFR 300.36, all payments that are allocable between these accounts pursuant to the allocation rules at 11 CFR 300.33(a) and (b). A State, district or local committee of a political party that has established separate Federal and non-Federal accounts under 11 CFR 102.5 and 11 CFR 300.30 must report all payments that are allocable between these accounts pursuant to the allocation rules at 11 CFR 300.33(a) and (b).

(1) *Reporting of allocations of expenses for activities.*

(i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 300.33, a State, district or local committee must state and explain the allocation percentage to be applied to each category of activity (e.g., 36% Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 300.33(b).

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district or local party committee must state the category of activity for which each allocated disbursement was made, and must summarize the total amounts expended by the Federal and non-Federal accounts that year, to date, for each such category.

(iii) In each report disclosing disbursements for allocable activity as described in 11 CFR 300.33, the State, district or local party committee must assign a unique identifying code to each such activity.

(2) *Reporting of transfers between the accounts of State, district and local party committees for allocable expenses.* A State, district or local committee of a political party that pays allocable expenses in accordance with 11 CFR 300.33(d) must report each transfer of funds from its non-Federal account or its Levin account to its Federal account for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee must itemize the transfer, showing the amounts designated for each category of expense, as described in 11 CFR 300.33(b).

(3) *Reporting of allocated disbursements.* A State, district or local committee of a political party that pays allocable expenses in accordance with 11 CFR 300.33(d) must report each allocable disbursement from its Federal account (*see* 11 CFR 300.36). In the report covering the period in which the disbursement occurred, the committee must state the full name and address of each individual or vendor to which the disbursement was made, the date, amount and purpose of each such disbursement, and the amounts allocated between Federal and Levin accounts or Federal and non-Federal accounts. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payments of certain salaries, of other administrative costs and of costs for voter registration outside 120 days before an election, as described in 11 CFR 300.33. The committee must also report the total amount expended by the committee that year, to date, for each category of activity.

(4) *Recordkeeping.* The treasurer must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

18. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

19. Section 106.1 would be amended by revising paragraphs (a)(1), (a)(2), and (e) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.*

(1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates. Party committees must use only Federal funds for such payments. *See* 11 CFR 100.24(a)(5).

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment by a separate segregated fund or a nonconnected committee that also includes amounts attributable to one or more non-Federal candidates, and that is made by a political committee with separate Federal and non-Federal accounts, shall be made according to the procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to 11 CFR 104.10(a).

* * * * *

(e) Party committees, separate segregated funds, and nonconnected committees that make disbursements for certain salaries, other administrative expenses, fundraising, generic voter drives, Levin activities, or certain voter registration activities, in connection with both Federal and non-Federal

elections, shall allocate their expenses in accordance with 11 CFR 106.6 or 300.33, as appropriate.

20. Section 106.5 would be revised to read as follows:

§ 106.5 Allocation of expenses between Federal and non-Federal activities by party committees.

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. Only Federal accounts may be used.

(b) State, district, and local party committees that make expenditures and disbursements in connection with Federal and non-Federal elections shall make those expenditures and disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5 and 11 CFR 300.30. Political committees that have established separate Federal, Levin and/or non-Federal accounts under 11 CFR 102.5(a)(1)(i) and 11 CFR 300.30 shall allocate expenses according to 11 CFR 300.33. Party organizations that are not political committees but have established separate Federal, Levin and/or non-Federal accounts under 11 CFR 102.5(b)(1)(i) and 11 CFR 300.30, or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) and any Levin payments from a separate account, shall also allocate their Federal and non-Federal expenses according to 11 CFR 300.33.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

21. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

22. Section 108.7 would be amended by revising paragraphs (c)(4) and (c)(5) and adding paragraph (c)(6) to read as follows:

§ 108.7 Effect on State law (2 U.S.C. 453).

* * * * *

(c) * * *

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

23. The authority citation for part 110 would continue to be read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h.

24. Section 110.1 would be amended by adding new paragraph (c)(5) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(c) * * *

(5) On or after January 1, 2003, no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $10,000.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

25. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), 441b.

26. Section 114.1 would be amended by revising paragraph (a)(2)(ix) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(ix) Donations to a State or local party committee used for the purchase or construction of its office building are subject to 11 CFR 300.35. No exception applies to contributions or donations to a national party committee that are made or used for the purchase or construction of any office building or facility; or

* * * * *

27. Part 300 would be added to subchapter B read as follows:

PART 300—NON-FEDERAL FUNDS

Sec.

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a)(i), 441i, 453.

§ 300.1 Scope, effective date, and organization.

(a) *Introduction.* This part implements changes to the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), enacted by Title I of the Bipartisan Campaign Finance Reform Act of 2002 (''BCRA''), Public Law 107–155. Unless expressly stated to the contrary, nothing in this part alters the definitions, restrictions, liabilities, and obligations imposed by sections 431–455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100–116).

(b) *Effective dates.*

(1) Except as otherwise specifically provided in this part, this part shall take effect on November 6, 2002; however, subpart B of this part shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date. *See* 11 CFR 300.12 for transition rules applicable to subpart A of this part.

(2) The increase in individual contribution limits to State committees of political parties, as described in 11 CFR 110.1(c)(5), shall apply to contributions made on or after January 1, 2003.

(c) *Organization of part.* Part 300, which generally addresses non-Federal funds and closely related topics, is organized into five subparts. Each subpart is oriented to the perspective of a category of persons facing issues related to non-Federal funds.

(1) Subpart A of this part prescribes rules pertaining to national party committees, including general non-Federal funds prohibitions, fundraising, and donation prohibitions with regard to certain tax-exempt organizations, transition rules as BCRA takes effect, and reporting.

(2) Subpart B of this part pertains to State, district, and local political party committees and organizations. Subpart B of this part focuses on the so-called ''Levin Amendment'' to BCRA, ''building fund'' issues, and fundraising and donation prohibitions with regard to certain tax-exempt organizations.

(3) Subpart C of this part addresses non-Federal funds issues from the perspective of tax-exempt organizations, setting out rules about prohibited fundraising for certain tax-exempt organizations by national party committees, State, district, and local party committees, and Federal candidates and officeholders.

(4) Subpart D of this part includes regulations about non-Federal funds issues facing Federal candidates and officeholders in Federal and non-Federal elections, and exceptions for those who are also State candidates, for attending and speaking at fundraising events, and with regard to certain tax-exempt organizations.

(5) Subpart E of this part focuses on State and local candidates, including regulations about the Federal funds for certain public communications, and exceptions for entirely non-Federal communications.

(6) For rules pertaining to convention and host committees, *see* 11 CFR part 9008.

§ 300.2 Definitions.

(a) A *501(c) organization that makes expenditures or disbursements in connection with a Federal election* includes an organization that:

(1) Establishes, finances, maintains, supports, or controls a political committee;

(2) Makes expenditures or disbursements for Federal election activity;

(3) Finances voter registration at any time; or

(4) Finances voter guides, candidate questionnaires, or candidate surveys that refer to one or more candidates for Federal office.

(b) *Agent* means any person who has actual express oral or written authority to act on behalf of a candidate, officeholder, or a national committee of a political party, or a State, district or local committee of a political party, or an entity directly or indirectly established, financed, maintained, or controlled by a party committee. An agent has actual authority if he or she has instructions, either oral or written, from the candidate or a committee official.

(c) *Directly or indirectly establish, maintain, finance, or control.* This paragraph applies to State, district, or local committees of a political party, candidates, and holders of Federal office, which shall be referred to as ''sponsors'' in this paragraph.

(1) A sponsor directly or indirectly establishes, finances, maintains, or controls an entity if one or more of the following conditions are satisfied as a result of actions taken by the sponsor, or by an officer, employee, or agent of the sponsor acting on behalf of the sponsor or at the sponsor's behest:

(i) The sponsor and the entity are affiliated under 11 CFR 100.5(g).

(ii) The sponsor, alone or in combination with other persons, forms, organizes, or otherwise creates the entity, including providing any of the funds used to form, organize or create the entity. As used in this paragraph, ''forms, organizes, or otherwise creates'' includes the conversion, reorganization, or redirection of a pre-existing entity.

(iii) The sponsor provides a significant amount of the entity's funding at any point in the entity's existence, whether by contribution (including in-kind contribution), donation (including in-kind donation), transfer, or other means. In determining whether or not this condition is satisfied, one or more of the following factors, any one of which may be dispositive, may be considered:

(A) The percentage of the entity's total funding in a given calendar year represented by the amount of funding provided by the sponsor.

(B) Whether the sponsor provided funding to the entity on a one-time basis or more systematically over a period of time, including the frequency, regularity, and duration of funding.

(C) The amount of time that has elapsed since the sponsor last provided funding to the entity.

(iv) The sponsor provides or has provided legal, accounting, consulting, administrative, or other services to the entity.

(v) The sponsor, alone or in combination with other persons, sets or has set policies for soliciting contributions or donations to the entity or for the making of expenditures or disbursements by the entity.

(vi) The same person or persons has or has had decision-making authority over the management of both the sponsor and the entity.

(2) Determinations by the Commission.

(i) A sponsor or entity may request an advisory opinion of the Commission to determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part. The request for such an advisory opinion must meet the requirements of 11 CFR part 112.

(ii) Notwithstanding the fact that a sponsor may have established an entity within the meaning of paragraph (c)(1)(ii) of this section, the committee or the entity may request an advisory opinion of the Commission determining that the relationship between the sponsor and the entity has been severed. The request for such an advisory opinion must meet the requirements of 11 CFR part 112, and must specifically include a complete description of all facts relevant to showing that all connections between the sponsor and the entity have been severed for at least five years.

(d) *Disbursement* means any purchase or payment made by a political committee or organization that is not a political committee.

(e) For purposes of part 300, *donation* means a payment, gift, subscription, loan, advance, deposit, or anything of value given to a non-Federal candidate, a party committee, 501(c) organization, or a section 527 organization, but does not include contributions or transfers.

(f) *Federal account* means an account at a financial depository institution or other account that contains funds to be used in connection with a Federal election.

(g) *Federal funds* mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act.

(h) *Levin account* means an account established by a State, district, or local committee of a political party pursuant to 11 CFR 300.30 for purposes of making expenditures or disbursements for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(i) *Levin funds* mean non-Federal funds that comply with the limitations, prohibitions, and reporting requirements set out in subpart B of this part, which are or will be disbursed by a State, district, or local committee of a political party for Federal election activity or non-Federal activity (subject to State law) under 11 CFR 300.32.

(j) *Non-Federal account* means an account at a financial depository institution or other account which contains funds to be used in connection with a State or local election.

(k) *Non-Federal funds* mean funds that are not subject to the limitations and prohibitions of the Act.

(l) *Promote, support, attack, or oppose.*

(1) A communication *promotes, supports, attacks, or opposes* a candidate if, when taken as a whole and with limited reference to external events, such as the proximity to the election, the communication:

(i) Expressly advocates the election or defeat of that clearly identified candidate; or

(ii) Unmistakably and unambiguously encourages action to elect or defeat a clearly identified candidate, even if it also encourages some other kind of action.

(2) For purposes of paragraph (l)(1), a communication does not *promote, support, attack, or oppose* a candidate for Federal office if:

(i) The communication is made in connection with an election for State or local office, and does not refer to any candidate for Federal office; or

(ii) The communication refers to a candidate for Federal office but the reference to the Federal candidate consists only of:

(A) The fact that the Federal candidate endorsed another Federal, State, or local candidate;

(B) The fact that another Federal, State, or local candidate agrees or disagrees with the Federal candidate's position on an issue or on legislation; or

(C) A reference to a bill or law by its popular name where that name includes the name of the Federal candidate.

(m) *To solicit or direct* means to request or suggest or recommend that another person make a contribution or donation, including through a conduit or intermediary, to a candidate, a political committee, or a political organization described in 26 U.S.C. 527 or a tax-exempt organization described in 26 U.S.C. 501(c). A solicitation does not include merely providing information or guidance as to the requirements of applicable law.

Subpart A—National Party Committees

§ 300.10 General prohibitions on raising and spending non-Federal funds (2 U.S.C. 441(i)(a) and (c)).

(a) *Prohibitions.* A national committee of a political party, including a national party congressional campaign committee, must not:

(1) Solicit, receive, or direct to another person a contribution, donation, or transfer of funds, or any other thing of value that are not subject to the prohibitions, limitations and reporting requirements of the Act; or

(2) Spend any funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act; or

(3) Solicit, receive, direct or transfer to another person, or spend, Levin funds.

(b) *Fundraising costs.* A national committee of a political party, including a national party congressional campaign committee, must use only Federal funds to raise funds that are used, in whole or in part, for expenditures and disbursements for Federal election activity.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national party congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee or a national congressional campaign committee.

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A national committee of a political party, including a national party congressional campaign committee, must not solicit any funds for, or make or direct any donations to the following organizations:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under section 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national party congressional committee;

(2) An entity that is directly or indirectly established, financed, maintained, or controlled by a national party committee, including a national party congressional committee, or an officer or agent acting on behalf of such entity; and

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national committee of a political party, including a national party congressional committee.

§ 300.12 Transition rules.

(a) *Permissible uses of excess non-Federal funds.* Non-Federal funds received before November 6, 2002, by a national committee of a political party, including a national party congressional campaign committee, must be used before January 1, 2003. Subject to the restrictions in paragraphs (b) and (e) of this section, such funds may be used only as follows:

(1) To retire outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(2) To pay expenses, retire outstanding debts, or pay for obligations incurred solely in connection with any run-off election, recount, or election contest resulting from an election held prior to November 6, 2002.

(b) *Prohibited uses of non-Federal funds.* Non-Federal funds received by a national committee of a political party, including a national party congressional campaign committee, before November 6, 2002, and in its possession on that date, may not be used for the following purposes:

(1) To pay any expenditure as defined in 2 U.S.C. 431(9);

(2) To retire outstanding debts or obligations that were incurred for any expenditure; or

(3) To defray the costs of the construction or purchase of any office building or facility.

(c) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee or a national party congressional campaign committee; and

(2) An entity that is directly or indirectly established, financed,

maintained, or controlled by a national party committee or a national congressional campaign committee.

(d) *Treatment of Federal and non-Federal accounts during transition period.* The following provisions applicable to the allocation of, and payment for, expenses between Federal and non-Federal accounts of national party committees shall remain in effect between November 6 and December 31, 2002: 11 CFR 106.5(a), 106.5(b), 106.5(c), 106.5(f) and 106.5(g).

(e) *National party committee office building or facility accounts.* Before November 6, 2002, the national committee of a political party, including a national party congressional campaign committee, may accept funds into its party office building or facility account, established pursuant to repealed § 431(8)(B)(viii), and may use the funds in the account only for the construction or purchase of an office building or facility. After November 5, 2002, the national committees may no longer accept funds into such an account and must not use such funds for the purchase or construction of a national party office building or facility. Funds on deposit in any party office building or facility account on November 6, 2002, must be either disgorged to the United States Treasury or donated to an organization described in 26 U.S.C. 170(c) no later than December 31, 2002.

§ 300.13 Reporting (2 U.S.C. 431 note and 434(e)).

(a) *In general.* The national committee of a political party, a national party campaign committee, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(b) *Termination report for non-Federal accounts.* Each committee described in paragraph (a) of this section shall file a termination report disclosing the disposition of all funds in all non-Federal accounts and building fund accounts by January 31, 2003.

(c) *Transitional reporting rules.*

(1) The reporting requirements in 11 CFR 104.9(c) for national party committee non-Federal accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

(2) The reporting requirements in 11 CFR 104.8(e) for national party committee non-Federal accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

(3) The reporting requirements in 11 CFR 104.8(f) and 104.9(d) for national party committee building fund accounts shall remain in effect for the report covering activity between November 6 and December 31, 2002.

Subpart B—State, District, and Local Party Committees and Organizations

§ 300.30 Accounts.

(a) *Federal Account.*

(1) Each State, district, and local party organization that qualifies as a political committee under 11 CFR 100.5 and that finances political activity in connection with both Federal and non-Federal elections shall:

(i) Establish a Federal account in a depository, in accordance with 11 CFR part 103, which shall be treated as a separate political committee and be required to comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and part 104; or

(ii) Establish a separate Federal political committee that shall register As a political committee and comply with the requirements of the Act.

(2) Each State, district, and local party organization that does not qualify as a political committee under 11 CFR 100.5 and that finances political activity in connection with both Federal and non-Federal elections shall—

(i) Establish a Federal account in a depository; or

(ii) Demonstrate by a reasonable accounting method that whenever such organization makes a contribution or expenditure, that organization has received sufficient funds that are permissible under the Act to make such contribution or expenditure. Such organization shall keep records of amounts received or expenditures under this subsection and, upon request, shall make such records available for examination by the Commission.

(3) Only contributions that are permissible pursuant to the limitations and prohibitions of the Act shall be deposited into any Federal account established pursuant to paragraphs (a)(1) or (2) of this section, regardless of whether such contributions are for use in connection with Federal and non-Federal elections.

(4) Only contributions solicited and received pursuant to the following conditions may be deposited in a Federal account established under paragraph (a)(1) or (2) of this section:

(i) Contributions must be designated by the contributors for the Federal account;

(ii) The solicitation must expressly state that contributions may be used wholly or in part in connection with a Federal election; or

(iii) The solicitation must expressly state that all contributions are subject to the prohibitions and limitations of the Act.

(5) All disbursements, contributions, and expenditures by a State, district, or local party committee made wholly or in part in connection with a Federal election must be made from the committee's Federal account, except as permitted by 11 CFR 300.32.

(6) Expenditures and disbursements for costs that are allocable pursuant to 11 CFR 300.33 must be made from the Federal account in their entirety, with the shares of a non-Federal account or of a Levin account being then transferred to the Federal account pursuant to 11 CFR 300.34.

(7) No transfers may be made to such Federal account from any other account(s) maintained by a State, district, or local party committee or from any other party committee at any level for the purpose of financing activity in connection with Federal elections, except as provided by 11 CFR 300.33 and 11 CFR 300.34.

(8) State, district, and local party committees may choose to make non-Federal disbursements from the Federal account, provided that such disbursements are reported pursuant to 11 CFR part 104 and provided that contributors of the Federal funds so used were notified that their contributions were subject to the limitations and prohibitions of the Act.

(b) *Levin account.*

(1) Any State, district, or local party committee, whether or not it qualifies as a political committee under the Act and including any organization that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and any officer or agent of such a committee or organization, that intends to engage in voter registration, voter identification, get-out-the-vote activity, and/or generic campaign activity pursuant to 11 CFR 300.32 must maintain a separate account in a depository for this purpose. This account shall be known as a Levin account.

(2) Only donations solicited and received pursuant to either of the following conditions may be deposited in a Levin account established under paragraph (b)(1) of this section:

(i) Donations must be designated by the donors for the Levin account; or

(ii) Donors have been informed that donations will be subject to the special donation limitations and prohibitions of 2 U.S.C. 441i(b)(2)(B) and 11 CFR 300.31(c) and (d).

(3) A State, district, or local party committees may use its Levin account to make expenditures or disbursements for

the categories of activities described at 11 CFR 300.32 or for other, non-Federal activities permissible under State law.

(4) A State, district, or local party committee may use its Levin account to make expenditures or disbursements only if all of the following conditions are met:

(i) The expenditure or disbursement does not pay for an activity that refers to a clearly identified candidate for Federal office;

(ii) The expenditure or disbursement does not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office; and

(iii) The Levin funds used for the expenditure or disbursement have been solicited, donated, received, and deposited in accordance with this part.

(c) *Non-Federal account.*

(1) Any State, district, or local party committee that makes disbursements solely in connection with State or local elections must establish a separate non-Federal account in a depository. The funds deposited into this account may be governed by State law.

(2) Disbursements, contributions, and expenditures made wholly or in part in connection with Federal elections must not be made from any non-Federal account, except as permitted by 11 CFR 300.33 and 11 CFR 300.34.

§ 300.31 Receipt of Levin funds.

(a) *General rule.* Levin funds expended or disbursed by any State, district, or local committee must be raised solely by the committee that expends or disburses them.

(b) *Compliance with State law.* Each donation of Levin funds solicited or accepted by a State, district, or local committee of a political party must be lawful under the laws of the State in which the committee is organized.

(c) *Donations from sources permitted by State law but prohibited by the Act.* If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to the committee from a source prohibited by the Act and this chapter, the committee may solicit and accept donations of Levin funds from that source, subject to paragraph (d) of this section.

(d) *Donation amount limitation.*

(1) *General rule.* A State, district, or local committee of a political party must not solicit or accept from any person (including any person established, financed, maintained, or controlled by such person) one or more donations of Levin funds aggregating to more than $10,000 in a calendar year.

(2) *Effect of different State limitations.* If the laws of the State in which a State, district, or local committee of a political party is organized limit donations to that committee to less than the amount specified in paragraph (d)(1) of this section, then the State law amount limitations shall control. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to that committee in amounts greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) of this section shall control.

(3) *No affiliation of committees for purposes of this paragraph.* For purposes of determining compliance with paragraph (d) of this section only, State, district, and local committees of the same political party shall not be considered affiliated. A person (including any person established, financed, maintained, or controlled by such person) may donate up to $10,000 per calendar year to each State, district, and local committee of political party.

(e) *No Levin funds from a national party committee or a Federal candidate or officeholder.* A State, district, or local committee of a political party disbursing Levin funds pursuant to 11 CFR 300.32 must not accept or use for those purposes any donations or other funds that are solicited, received, directed, transferred, or spent by or in the name of any of the following persons:

(1) A national committee of a political party (including a national congressional campaign committee of a political party). Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a national committee of a political party.

(2) A Federal candidate, individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding Federal office. Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with a Federal candidate, individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or individuals holding Federal office. A Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party at which Levin funds are raised. *See* 11 CFR 300.64.

(f) *Certain joint fundraising prohibited.* Notwithstanding 11 CFR 102.17, a State, district, or local committee of a political party must not raise Levin funds by means of joint fundraising with any other State, district, or local committee of any political party, or the agent of such a committee. This prohibition includes State, district, and local committees of a political party organized in another State. The use of a common vendor for fundraising by more than one State, district, or local committee of a political party, or the agent of such a committee, shall not, by itself, be deemed joint fundraising for purposes of this paragraph.

§ 300.32 Expenditures and disbursements.

(a) *Federal funds.*

(1) A State, district, or local committee of a political party that makes an expenditure or disbursement for the purpose of influencing a Federal election must use Federal funds for the expenditure, subject to the provisions of this chapter. An association or similar group of candidates for State or local office, or an association or similar group of individuals holding State or local office, must make any expenditures or disbursements for Federal election activity solely with Federal funds.

(2) Except as provided in this part, a State, district, or local committee of a political party that makes expenditures or disbursements for Federal election activity must use Federal funds for that purpose, subject to the provisions of this chapter.

(3) State, district, and local party committees that engage in fundraising for Federal activities must pay all costs related to such fundraising only with Federal funds.

(4) State, district, and local party committees that engage in fundraising for a Levin account must pay all costs related to raising such funds only with Federal funds.

(b) *Levin funds.* A State, district, or local committee of a political party may spend Levin funds in accordance with this part on the following types of activity:

(1) Subject to the conditions set out in paragraph (c) of this section, the following types of Federal election activity:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot).

(2) Any use that is lawful under the laws of the State in which the committee is organized. A disbursement of Levin funds under this paragraph need not comply with paragraph (c) of this section, except as required by State law.

(c) *Conditions and restrictions on spending Levin funds for Federal election activity.*

(1) The Federal election activity for which the expenditure or disbursement is made must not refer to a clearly identified candidate for Federal office.

(2) The expenditure or disbursement must not pay for any part of the costs of any broadcasting, cable, or satellite communication, other than a communication that refers solely to a clearly identified candidate for State or local office.

(3) The expenditure or disbursement must be made from funds raised in accordance with 11 CFR 300.31.

(4) The expenditure or disbursement must be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

(d) *Non-Federal funds.* A State, district, or local committee of a political party that makes disbursements for non-Federal activity may make those disbursements from its Federal or non-Federal funds, subject to the laws of the State in which it is organized. A State, district, or local party committee that engages in fundraising for solely non-Federal funds may pay the costs related to such fundraising from any account, subject to State law, including a Federal account. A disbursement of non-Federal funds made under State law by a State, district, or local committee of a political party that is not directed by the disbursing committee for the purpose of influencing a Federal election or for Federal election activity shall not be an expenditure under 11 CFR 100.8 or an expenditure or disbursement for Federal election activity.

§ 300.33 Allocation.

(a) *Costs allocable by State, district, and local party committees.*

(1) *Salaries.* State, district, and local party committees may allocate the salaries of employees who spend 25% or less of their time in any given month on Federal election activity between the committee's Federal and non-Federal accounts. The salaries of those employees who spend more than 25% of their time in any given month on Federal election activity must be paid only with Federal funds.

(2) *Administrative costs.* State, district, and local party committees may allocate administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

(3) *Costs of voter registration within a certain time period, voter identification, get-out-the-vote, and generic campaign activity.* State, district, and local party committees that have established a Federal account and a separate Levin account pursuant to 11 CFR 300.30(b), must allocate disbursements or expenditures between these two accounts for:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date of a regularly scheduled Federal election and that ends on the date of the election, provided that the activity does not clearly identify a Federal candidate; and

(ii) Voter identification, get-out-the-vote activity, or generic campaign activities conducted in connection with an election in which a candidate for Federal office is on the ballot.

(b) *Allocation percentages, ratios and record-keeping.*

(1) *Salaries.* Committees must keep time records for all employees for purposes of determining the percentage of time spent on activities in connection with a Federal election. Allocations of salaries will be undertaken as follows:

(i) Salaries of employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must be paid 100% from the Federal account.

(ii) Salaries of employees who spend 25% or less of their compensated time in a given month on activities in connection with a Federal election shall be allocated between the committee's Federal and non-Federal account.

(iii) Salaries of employees who spend no time in a given month on activities in connection with a Federal election may be paid solely from the non-Federal account.

(2) *Administrative costs.* State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:

(i) *Presidential election years.* In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees must allocate at least 28% of administrative expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any year in which a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees must allocate at least 36% of administrative expenses to their Federal accounts.

(iii) *Senate election year.* In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, State, district and local party committees must allocate at least 21% of administrative expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any year in which neither a Presidential nor a Senate candidate appears on the ballot, State, district and local party committee must allocate at least 15% of administrative expenses to their Federal account.

(3) *Levin activities—Voter registration, voter identification, get-out-the-vote, and generic campaign activity.* State, district, and local party committees that choose to make expenditures and disbursements in connection with activities described in paragraph (a)(3) of this section must allocate such expenditures and disbursements between their Federal and Levin accounts. The allocation must result in the following minimum percentages to their Federal accounts:

(i) *Presidential election years.* In any year in which a Presidential candidate, but no Senate candidate appears on the ballot, State, district, and local party committees must allocate at least 28% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(ii) *Presidential and Senate election year.* In any year in which a Presidential candidate and a Senate candidate appear on the ballot, State, district, and local party committees must allocate at least 36% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(iii) *Senate election year.* In any year in which a Senate candidate, but no Presidential candidate, appears on the ballot, State, district, and local party committees must allocate at least 21% of expenses for activities described in paragraph (a)(2) of this section to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any year in which neither a Presidential nor a Senate candidate appears on the ballot, State, district, and local party committee must allocate at least 15% of expenses for activities

described in paragraph (a)(2) of this section to their Federal account.

(4) *Other voter registration activities.* Expenses for voter registration activities undertaken by a State, district, or local party committee outside the period beginning 120 days before an election and ending on the date of the election may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.

(5) *Other get-out-the-vote activities when no Federal candidate is on the ballot.* Expenses for voter identification, get-out-the-vote, and generic campaign activity when no Federal candidate is on the ballot that are undertaken by a State, district, or local party committee may be paid with 100% non-Federal funds, or they may be allocated between the committee's Federal and non-Federal accounts.

(c) *Costs not allocable by State, district, and local party committees.* The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) *Activities that refer to clearly identified Federal candidates.* Disbursements by State, district, and local party committee for activities that refer to a clearly identified candidate for Federal office must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.

(2) *Activities that refer to Federal and to State and/or local elections.* With the exception of activities described in paragraph (a)(3) of this section, disbursements by State, district, and local party committee for activities that do not refer to a clearly identified Federal candidate, but that are wholly or in part in connection with Federal elections, must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used.

(3) *Fundraising costs.* Disbursements for fundraising costs incurred by State, district, and local party committees for funds to be used, in whole or in part, for Federal election activity, including the activities described at paragraph (a)(3) of this section, must not be allocated between or among Federal, non-Federal and Levin accounts. Only Federal funds may be used. However, if such disbursements are for solely non-Federal fundraising costs, non-Federal funds may be used.

(d) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees may transfer funds from their non-Federal or Levin accounts to their Federal accounts solely to meet allocable expenses and only pursuant to the following requirements:

(1) *Payments from Federal accounts.* State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and must transfer funds from their non-Federal account to the Federal account for administrative expenses or from their Levin account for expenses related to activities identified in paragraph (a)(2) of this section.

(2) *Timing.*

(i) State, district, and local party committees must transfer funds from their non-Federal or Levin accounts to their Federal accounts to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal account, except that transfers may be made more than 10 days before a payment is made from the Federal account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal account that does not meet the requirement of paragraph (d)(2)(i) of this section shall be presumed to be a loan or contribution from the non-Federal account or the Levin account to the Federal account, in violation of the Act.

§ 300.34 Transfers.

(a) *Federal funds.* Notwithstanding 11 CFR 102.6(a)(1)(ii), a State, district, or local committee of a political party must not use any Federal funds transferred to it from, or otherwise accepted by it from, any of the persons enumerated in paragraphs (b)(1) and (b)(2) of this section as the Federal component of an expenditure for Federal election activity under 11 CFR 300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure allocated between Federal funds and Levin funds under 11 CFR 300.32 and 300.33.

(b) *Levin funds.* Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by:

(1) Any other State, district, or local committee of any political party, any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee; or,

(2) The national committee of any political party (including a national congressional campaign committee of a political party), any officer or agent acting on behalf of such a committee, or any entity directly or indirectly established, financed, maintained or controlled by such a committee.

(c) *Allocation transfers.* Transfers of Levin funds between the accounts of a State, district, or local committee of a political party for allocation purposes must comply with 11 CFR 300.33.

§ 300.35 Office buildings.

(a) *General provision.* A State or local party committee may raise and spend funds for the purchase or construction of its office building, and such funds are not subject to the limitations, prohibitions, and disclosure provisions of the Act. Funds raised and spent for the purchase or construction of an office building are subject to State law. An office building must not be purchased or constructed for the purpose of influencing the election of any candidate in any particular election for Federal office. For purposes of this section, the term *local party committee* shall include a *district party committee.*

(b) *Application of State law.* Amounts raised and spent by a State or local party committee for the purchase or construction of its office building are subject to State law as set forth in paragraphs (b)(1) and (b)(2) of this section.

(1) *Non-Federal account.* If a State or local party committee uses non-Federal funds, Federal law does not preempt or supersede State law as to the source of funds used, the permissibility of the disbursements, or the reporting of the receipt and disbursement of such funds, except as provided in paragraph (d) of this section.

(2) *Federal account.* If a State or local party committee uses funds from its accounts containing only Federal funds, Federal law does not supersede or preempt State law as to the permissibility of the disbursements, except as provided in paragraph (d) of this section. Federal law also does not preempt or supersede any State law that purports to prohibit or limit the source of the funds, as ascertained by application of a reasonable accounting method prescribed under State law.

(3) *Levin funds.* Levin funds may be used for the purchase or construction of a State or local party committee office building, if permitted by State law.

(c) *Definition of ''purchase or construction of an office building.''*

(1) *Office building* means a structure and the land underlying the structure, comprised of structural components and

fixtures essential to the operation or appearance of the building, and that is lawfully occupied and used by a State or local party committee solely for its own party administration and election campaign support purposes. The term does not include office furnishings, furniture, equipment and machinery (such as computers, file cabinets, photocopiers or audio-visual production equipment).

(2) *Purchase* means any payment to acquire the sole legal title to the building, including fees directly related to the acquisition of the building, such as sales commissions and real estate closing or settlement fees. Purchase does not include payments for the rent or leasing of an office building, property taxes and similar assessments, building maintenance, utility services, and office equipment.

(3) *Construction* includes the design and erection of the structure of a building. Construction does not include the maintenance or repair of the building or its structural components, unless the repair work reaches a level to constitute major restoration or renovation of the building.

(d) *Allocation of expenses not within the definition of ''purchase or construction of an office building.''* If funds raised by a State or local party committee are used for an expense for its office building and the expense does not fall within the definitions in paragraph (c) of this section, the expense is an allocable administrative expense unless it falls within another category, such as support for a Federal or non-Federal candidate. If the expense is an allocable administrative expense, 11 CFR 300.33 applies, and the administrative expense is subject to the limitations and prohibitions of the Act.

(e) *Transitional Provisions for State Party Building or Facility Account.* Up to and including November 5, 2002, the State committee of a political party may accept funds into its party office building or facility account, established pursuant to repealed 2 U.S.C. 431(8)(B)(viii), and use the funds in the account only for the construction or purchase of an office building or facility. Starting on November 6, 2002, the funds in the account will be subject to the provisions of paragraphs (a) through (c) of this section if used for a State party office building. They may not be used for Federal account or Levin account purposes. They may be used for any non-Federal purposes, as permitted under State law.

§ 300.36 Reporting Federal election activity; recordkeeping.

(a) *Requirements for a State, district, or local committee of a political party that is not a political committee.*

(1) A State, district, or local committee of a political party that is not a political committee (*see* 11 CFR 100.5) must demonstrate through a reasonable accounting method that whenever it makes a payment of Federal funds for Federal election activity (*see* 11 CFR 300.32 and 300.33) it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. Such an organization must keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(2) A payment of Federal funds for Federal election activity shall constitute an expenditure for purposes of determining whether a State, district, or local committee of a political party qualifies as a political committee under 11 CFR 100.5, unless the payment is excluded from the definition of expenditure under 11 CFR 100.8. A payment of Federal funds for Federal election activity that meets the criteria of 100.8(b)(10), (16), or (18) (*exempt activities*) shall be treated as a payment for exempt activity in accordance with all applicable provisions of this chapter, including, but not limited to, 11 CFR 100.5(c).

(b) *Requirements for a State, district, or local committee of a political party that is a political committee.*

(1) *Reporting disbursements of Federal funds for Federal election activity.* A State, district, or local committee of a political party that is a political committee (*see* 11 CFR 100.5) must report all disbursements of Federal funds for Federal election activity, including the Federally allocated portion of a payment for Federal election activity. This requirement applies whether or not the committee's aggregate total receipts and disbursements for Federal election activity is $5,000 or more during the calendar year. For purposes of this paragraph, a disbursement of Federal funds for Federal election activity (*see* 11 CFR 300.32 and 300.33) by a State, district, or local committee of a political party that is a political committee shall be deemed an expenditure and reported as such, unless the disbursement is excluded from the definition of expenditure under 11 CFR 100.8.

(2) *Reporting all receipts and disbursements for Federal election activity; threshold.* In addition to the requirements of paragraph (b)(1) of this section, a State, district, or local committee of a political party that is a political committee must report all receipts and disbursements made for Federal election activity if the aggregate amount of such receipts and disbursements is $5,000 or more during the calendar year. The disclosure required by this paragraph must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity, notwithstanding the otherwise non-Federal nature of the Levin funds.

(i) *Reporting of payments for Federal election activity allocated between Federal funds and Levin funds.* A State, district, or local committee of a political party that makes a payment for Federal election activity that is allocated between Federal funds and Levin funds (*see* 11 CFR 300.33) must report for each such payment the full name and address of each person to whom the payment was made, the date of the payment, amount and purpose of the payment, and the amount of and explanation for the allocation percentage used for the payment, as provided in 11 CFR 104.17(b). If the payment is for the allocable costs of more than one Federal election activity, the committee must itemize the payment, showing the amounts designated for each Federal election activity. The committee must also report the total amount paid for Federal election activity that calendar year, to date, for each Federal election activity.

(ii) *Itemization.* The disclosure required by paragraph (b)(2) of this section must include, in addition to any other applicable reporting requirement of this chapter, the itemized disclosure of receipts and disbursements of $200 or more to or from any person for Federal election activities, as provided in part 104.

(3) *Reporting of other payments allocated between Federal funds and non-Federal funds.* A State, district, or local committee of a political party that makes a payment for costs allocable between Federal and non-Federal funds, other than the costs of Federal election activity that is allocated between Federal funds and Levin funds under 11 CFR 300.33, must comply with 11 CFR 104.17.

(c) *Filing Schedule.* A State, district, or local committee of a political party that must file reports under paragraph (b) of this section must comply with the monthly filing schedule in 11 CFR 104.5(c)(3).

(d) *Recordkeeping.* A State, district, or local committee of a political party that must file reports under paragraph (b) of

this section must comply with the requirements of 11 CFR 104.14.

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donation to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527 except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a state or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such entity; and

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a State, district or local committee of a political party.

Subpart C—Tax-Exempt Organizations

§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national party congressional campaign committee, must not solicit any funds for, or make or direct any donations to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a national party committee, including a national party congressional committee;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a national party committee, including a national party congressional committee, or an officer or agent acting on behalf of such an entity; or

(3) An entity that is directly or indirectly established, financed, maintained, or controlled by an agent of a national committee of a political party, including a national party congressional committee.

§ 300.51 Prohibited fundraising by State, district, and local party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district, or local committee of a political party must not solicit any funds for, or make or direct any donation to:

(1) An organization that is described in 26 U.S.C. 501(c) and exempt from taxation under section 26 U.S.C. 501(a) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity;

(2) An organization that has submitted an application for tax-exempt status under 26 U.S.C. 501(c) and that makes expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity; or

(3) An organization described in 26 U.S.C. 527, except for a political committee; a State, district, or local committee of a political party; or the authorized campaign committee of a State or local candidate.

(b) *Application.* This section also applies to:

(1) An officer or agent acting on behalf of a State, district, or local committee of a political party;

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district, or local committee of a political party or an officer or agent acting on behalf of such an entity; and

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a State, district, or local committee of a political party.

§ 300.52 Fundraising by Federal candidates and Federal officeholders (2 U.S.C. 441i(e)(4)).

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a general solicitation of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c), without regard to the source or amount of funds, only if all of the following conditions apply:

(1) The solicitation does not specify how the funds will or should be spent;

(2) The solicitation is not for a 501(c) organization whose principal purpose is to conduct:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(ii) Voter identification, get-out-the-vote activity or generic campaign activity conducted in connection with an election in which a Federal candidate appears on the ballot even if a candidate for State or local office also appears on the ballot; and

(3) The solicitation is not for the activities described in paragraph (a)(2) of this section.

(b) *Specific solicitations.*

(1) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly to obtain funds to carry out the activities described in paragraph (a)(2) of this section, only if the following conditions are met:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed $20,000.

(2) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly for an entity whose principal purpose is to conduct any of the activities described in paragraph (a)(2) of this section, only if the following conditions are met:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed $20,000.

Subpart D—Federal Candidates and Officeholders

§ 300.60 Scope (2 U.S.C. 441i(e)(1)).

This subpart applies to:

(a) Federal candidates,

(b) Individuals holding Federal office,

(c) Agents of a Federal candidate or individual holding Federal office, and

(d) Entities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office.

§ 300.61 Federal elections (2 U.S.C. 441i(e)(1)(A)).

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity as defined in 11 CFR 100.24, unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act.

§ 300.62 Non-Federal elections (2 U.S.C. 441i(e)(1)(B)).

No person described in 11 CFR 300.60 shall solicit, receive, direct, transfer, or spend or disburse funds in connection with any non-Federal election, unless the amounts consist of Federal funds that are subject to the limitations and prohibitions of the Act.

§ 300.63 Exception for State party candidates (2 U.S.C. 441i(e)(2)).

Section 300.62 shall not apply to a Federal candidate or individual holding Federal office who is a candidate for State or local office, if the solicitation, receipt or spending of funds is permitted under State law; and refers only to that State or local candidate, to any other candidate for that same State or local office, or both. If an individual is simultaneously running for both Federal and State or local office, the individual must raise, accept, and spend only Federal funds for the Federal election.

§ 300.64 Exemption for attending or speaking at fundraising events (2 U.S.C. 441i(e)(3)).

Notwithstanding the provisions of 11 CFR 100.24, 300.61 and 300.62, a Federal candidate or individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, including a fundraising event at which Levin funds are raised, or at which non-Federal funds are raised. Such candidate or individual holding Federal office shall not solicit, receive, direct, transfer, or spend funds or participate in any other fundraising aspect of any such event.

§ 300.65 Exceptions for certain tax-exempt organizations.

(a) *General solicitations.* A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a general solicitation of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a), or an organization that has submitted an application for determination of tax-exempt status under 26 U.S.C. 501(c), without regard to the source or amount of funds, only if all of the following conditions apply:

(1) The solicitation does not specify how the funds will or should be spent;

(2) The solicitation is not for a 501(c) organization whose principal purpose is to conduct:

(i) Voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; or

(ii) Voter identification, get-out-the-vote activity or generic campaign activity conducted in connection with an election in which a Federal candidate appears on the ballot even if a candidate for State or local office also appears on the ballot; and

(3) The solicitation is not for the activities described in paragraph (a)(2) of this section.

(b) *Specific solicitations.*

(1) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly to obtain funds to carry out the activities described in paragraph (a)(2) of this section, only if:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed $20,000.

(2) A Federal candidate, an individual holding Federal office, and an individual who is an agent of either may make a solicitation explicitly for an entity whose principal purpose is to conduct any of the activities described in paragraph (a)(2) of this section only if:

(i) The solicitation is made only to individuals; and

(ii) The amount solicited from any individual during any calendar year does not exceed $20,000.

Subpart E—State and Local Candidates

§ 300.70 Scope (2 U.S.C. 441i(f)(1)).

This subpart applies to any candidate for State or local office, individual holding State or local office, or an agent of any such candidate or individual. For example, this subpart applies to an individual holding Federal office who is a candidate for State or local office. This subpart does not apply to an association or similar group of candidates for State or local office or of individuals holding State or local office.

§ 300.71 Federal funds required for certain public communications (2 U.S.C. 441i(f)(1)).

No individual described in 11 CFR 300.70 shall spend any amounts for a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified), and that promotes or supports any candidate for that Federal office, or attacks or opposes any candidate for that Federal office (regardless of whether the communication expressly advocates a vote for or against a candidate) unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* definition of *public communication* at 11 CFR 100.26.

§ 300.72 Federal funds not required for certain communications (2 U.S.C. 441i(f)(2)).

The requirements of section 11 CFR 300.71 shall not apply if the communication:

(a) Is in connection with an election for State or local office, and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office; or

(b) Comes within the scope of 11 CFR 300.2(*l*)(2)(ii).

PART 9034—ENTITLEMENTS

28. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

29. Section 9034.8 would be amended by adding introductory language to paragraph (a) to read as follows:

§ 9034.8 Joint fundraising.

(a) *General.* Nothing in this section shall permit any person to solicit, receive, direct, transfer, or spend any non-Federal funds prohibited under 11 CFR part 300.

* * * * *

Dated: May 10, 2002.

David. M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–12177 Filed 5–15–02; 10:13 am]

BILLING CODE 6715–01–P

Federal Register

Monday,

May 20, 2002

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding two priorities, one priority on Aging-Related Changes in Impairment for Persons Living with Physical Disabilities and a priority on Personal Assistance Services under the Rehabilitation Research and Training Center (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2002–2004. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 19, 2002.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term Aging-Related Changes in Impairment for Persons Living with Physical Disabilities or Personal Assistance Services in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the priorities in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding an additional priority, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The proposed priorities refer to President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities also refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Description of the Rehabilitation Research and Training Centers (RRTC) Program

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priorities

Aging-Related Changes in Impairment for Persons Living With Physical Disabilities

Background:

In recent years, advances in medical science, technology, rehabilitation, public health, and consumer education have resulted in increased life expectancies for individuals with physical disabilities. Individuals with physical disabilities face challenges, not only with the physical, mental and social manifestations of ''normal'' aging, but also the cumulative effects of chronic, disability-specific functional impairments. The impact of these new, physical, functional, and psychosocial changes are often unanticipated and are variable, depending on a myriad of factors including, but not limited to, disability severity and age of onset, presence of secondary health conditions, access to community-based supports, caregiver support and burden, and access to routine health care. (Aging with Disability, RRTC on Aging with a Disability, *http://www.jik.com/awdrtcawd.html).*

The 1997 Census data estimate that 33.0 million individuals, 12.3 percent of

the population had a severe disability. Individuals 15 years of age and over were defined as having a severe disability if they: (1) Used a wheelchair, cane, crutches, or walker; (2) had other mental or emotional conditions that seriously interfered with everyday activities; (3) received federal benefits based on their inability to work; (4) had Alzheimer's disease, mental retardation, or a developmental disability; or (5) were unable to perform (without assistance) one or more activities of daily living, instrumental activities of daily living, or functional activities such as seeing, hearing, speaking, lifting, walking, or grasping small objects (U.S. Census Bureau, Census 1996 Survey of Income and Program Participation: Aug.–Nov. 1997, pg. 2).

For those 21 million individuals who reported having a disability in a single domain, those 15 years of age and older confirmed having a disability in the physical domain. This represents a substantially higher proportion than those declaring disability in the communication or mental domains (U.S. Census Bureau, Census 1996 Survey of Income and Program Participation: Aug.–Nov. 1997, Table 2, pg. 13).

It is recognized that there are numerous widely accepted definitions for physical disability used in the disability and rehabilitation research literature. For the purposes of this priority, Verbrugge's definition of the physical class of disability will be used. As stated, ''physical disability refers to difficulty in performing basic actions required for daily living, such as mobility, purposeful movement, balance, and strength,'' (*Verbrugge L., Disability,* Rheumatic Disease Clinics of North America, Nov. 1990; 16(4)). Physical disabilities are often referred to in the context of being able to perform self-care activities or activities required for community living (Ostir G.V., *Disability in Older Adults 1: Prevalence, Causes and Consequences,* Behavioral Medicine, Winter 1999; 24(4): 147–56, pg.2). Some examples of physical disabilities include, but are not limited to: Spinal Cord Injury (SCI); Cerebral Palsy (CP); Post-Polio Syndrome (PPS); Muscular Dystrophy (MD); and Multiple Sclerosis (MS). Many individuals with these long-term conditions describe the onset of increased pain, spasticity, joint stiffness and generalized fatigue, decreased muscle strength, reduced stamina and endurance (*Aging, Well-Being and Cerebral Palsy,* The Roeher Institute Final Report, submitted October 1996, *http://www.ofcp.on.ca/aging.html;* Gueze R., et al., *Clinical and research diagnostic criteria for developmental coordination disorder: a review and discussion,* Human Movement Science 2001 Mar; 20(1–2): 7–47; Siddall P.J. & Loeser J.D., *Pain following spinal cord injury,* Spinal Cord, 2001; 39: 63–73). For example, studies show that persons aging with SCI routinely report increased fatigue and pain *(Functional Change Fact Sheet 3, http://www.agingwithsci.org).* Individuals diagnosed with PPS encounter new, progressive muscle weakness, increases in pain, diminished energy levels up to 15 years after their original illness *(Post Polio Syndrome: Identifying Best Practices in Diagnosis and Care, http://www.modimes.org).*

Classic studies on aging, such as, the Baltimore Longitudinal Study of Aging have provided a plethora of baseline data from which gerontologists and geriatric professionals have documented the physiological, psychological, and social aspects of the normal aging process. As a result of more recent studies conducted in the disability and rehabilitation arena, findings are emerging that begin to support and frame: (1) documentation and characterization of the atypical aging patterns noted in many individuals with physical disabilities and (2) systematic identification and development of strategies to measure and assess aging related changes and increases in severity of impairment.

Measurement of changes in impairment associated with aging with a disability is as complex and dynamic as the myriad of medical, socio-demographic, and psychosocial factors that influence the aging process. Gerontology, sociology and allied health literature suggest that, across disability groups, examination of the variability and interrelationship of five factors are critical to successfully measuring and characterizing aging-related changes and the overarching impact these changes may have on activity limitation and participation across major life domains. These factors are: (1) The era in which the individual is diagnosed (period of onset); (2) the chronological age at which disability occurs (age of onset) (3) duration of disability; (4) initial severity; and (5) the presence or onset of secondary conditions.

Study across diagnostic groups has been especially difficult because of the wide array of secondary conditions and confounding complications resulting from routine aging and associated with the primary condition causing disability. Public health experts agree that secondary conditions constitute a significant and shared health risk for individuals aging with physical disabilities. Individuals with polio and rheumatoid arthritis report experiencing osteoarthritis, diabetes, heart disease, high blood pressure, and asthma. (Campbell M.L., *et al., Secondary health conditions among middle-aged individuals with chronic physical disabilities: implications for unmet needs for services,* Assistive Technology; 1999; 11(2): 105–122). Individuals with SCI and other chronic physical disabilities also report health problems such as hypertension, high cholesterol, cardiopulmonary disorders, obesity, osteoporosis, bone fractures, and pressure ulcers, which are all considered to be of especially high incidence in individuals with chronic physical disability (Garland D.E., *et al., Bone Loss with Aging and the Impact of SCI,* Topics in Spinal Cord Rehabilitation, 6: 3, 61–69; Kraft G.H., *Multiple Sclerosis: A Rehabilitative Approach, http://depts.washington.edu/rehab/ms/narrative.shtml).*

In general, inviduals aging with a physical disability are more likely than their non-disabled peers to experience declines in health status, increases in severity of impairment, reduction in level of activity, and reduced participation in major life activities. These aging-related changes can lead to decreased functional independence and diminished quality of life for some individuals while others may experience relative stability in function as they age with their physical disability. (Ostir G.V., *Disability in Older Adults 1: Prevalence, Causes and Consequences,* Behavioral Medicine, Winter 1999; 24(4): 147–56; Carlson J.E., *Disability in Older Adults 2: Physical Activity as Prevention,* Behavioral Medicine, Winter 1999; 24 (4): 157–68; Guttman C., *Older Americans 2000: New data system that tracks health and well-being finds successes and disparities,* Geriatrics, Oct 2000; 55(10): 63–6,69).

Further, as compared to the non-disabled population, aging-related changes have a greater impact on individuals with physical disabilities who are already less likely to work, attend college, access and utilize community-based services, and participate in recreation and leisure time activities. These same individuals are often more likely to experience clinical depression, encounter social isolation and substance abuse problems (Maloni H.W., *Pain in multiple sclerosis: an overview of its nature and management,* Journal of Neuroscience Nursing, 2000; June; 32(3): 139–44, 152; Kaplan G.A., *et al., Natural history of leisure-time physical activity and its correlates: associations with mortality from all causes and cardiovascular disease over 28 years,* American Journal

of Epidemiology, 1996; 144: 793–7; Mendes de Leon, *et al., Self-efficacy, physical decline, and change in functioning in community-living elders: a prospective study,* Journal of Gerontology and Social Science, 1996; 51: 183–90). Through the implementation of the NFI and the Plan, NIDRR seeks to address the issues of aging with a physical disability, with particular attention on preventing or minimizing changes in impairment or both that impact activity and participation in major life domains.

Focusing on both individual and systemic factors that impact function, activity and participation, the NFI emphasizes the importance of access to assistive and universally-designed technologies, employer and workplace supports, and promoting full access to community-based care. The Plan, which emphasizes the need for consumer knowledge and information, new techniques, and technologies and advancements in the overall body of scientific knowledge, calls for research to improve individual outcomes in employment, health and function, technology for access and function, and independent living and community integration. Clearly, the challenges and opportunities for research on the unique and varied issues of aging across disability groups are reflected throughout the elements of the NFI and the Plan.

Priority 1

The Assistant Secretary proposes to establish a Rehabilitation Research and Training Center on Aging-Related Changes in Impairment for Persons Living with Physical Disabilities. The purpose of this absolute priority is to generate new knowledge regarding the characteristics, prevalence, and distribution of these changes, their interrelationships with lifestyle and environmental factors, and their consequences on health, activity, and participation across the life span. The priority seeks to improve rehabilitation outcomes by encouraging innovative interventions aimed at preventing or minimizing the impact of aging-related changes on the well-being and productivity of persons with physical disabilities. The RRTC is required to conduct significant and substantial cross-disability research and is encouraged to collaborate with one or more institutions, for the purposes of ensuring inclusion of multidisciplinary expertise across disability groups, and sufficient sample size and methodological rigor to generate robust findings.

The RRTC must:

(1) Clarify definitions and critically review and analyze strategies to measure aging-related changes in physical, psychological, and sensory impairment within and across at least two physical disabilities such as, but not limited to, SCI, CP, PPS, MD, and MS;

(2) Using the disabilities selected, document aging-related changes and examine variations in terms of prevalence, magnitude of change, timing of onset (age and duration of disability), onset severity and socio-demographic distribution within, and between study groups;

(3) Develop a conceptual model, grounded in an appropriate theoretical framework, of aging-related changes in impairment that: (a) Predicts determinants of increases or stability in severity of impairment such as age, disability, lifestyle, or environmental factors; (b) quantifies the interrelationships between stability and increases in impairment and the occurrence of secondary health conditions; and (c) evaluates the consequences of changes in impairment on activity and participation across major life domains;

(4) Using the model (see (3)) as a framework, identify or develop and evaluate rehabilitation techniques or interventions, or both, to mitigate the direct consequences of changes in impairment on health, activity limitations, and participation in employment, family life, independent living, community integration, and leisure and recreational activities; and

(5) Develop, implement, and evaluate a comprehensive plan to train policymakers, researchers, practitioners, service providers and advocates in rehabilitation and disability-related fields, and consumers and family members about aging-related changes in impairment, and the consequences for health, participation and quality of life of individuals with physical disabilities.

In carrying out the purposes of the priority, the RRTC shall:

- Develop and implement during the first year of the grant, and in consultation with the National Center on Dissemination of Disability Research (NCDDR), a comprehensive plan that promotes broad dissemination to both consumer and professional audiences;
- Involve consumers and family members as appropriate in all stages of research and related activities;
- Address the unique needs of individuals aging with physical disabilities who are members of groups that have traditionally been underrepresented, and demonstrate use of culturally appropriate methods of data collection, measurement and dissemination;
- Collaborate on projects, as appropriate, with NIDRR-funded RRTCs, RERCs, and Model Systems, and other public and private agencies and institutions;
- In the fourth year of the project, conduct a state-of-the-science national conference to disseminate and discuss the results of the research with researchers, policymakers, consumers, family members, and other stakeholders; and
- Demonstrate appropriate multidisciplinary linkages to Geriatrics, Gerontology and Rehabilitation.

Personal Assistance Services

Background

Personal Assistance Services (PAS) ''means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.'' (34 CFR 385.4(b)). In practice, PAS may be provided to a range of populations, with a variety of disabilities, through a number of delivery models with varying types of services, and using a variety of funding mechanisms. NIDRR's Long-Range Plan (the Plan) sets a goal in which PAS is based upon a support model, with the consumer having primary control.

In both the New Freedom Initiative (NFI) and in his Executive Order (E.O.) 13207 on Community-Based Alternatives for Individuals with Disabilities derived from the Supreme Court's Olmstead decision, the President states a clear intent ''to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life'' *(http://www.whitehouse.gov/news/releases/2001/06/20010619.html).*

The combination of policies, protections, and mandates underscores the appropriateness of a continued strong research focus on factors associated with PAS at home, in the community, and at the worksite. The goal of these efforts is to maximize the range of options available to individuals with disabilities to ensure their full integration into and participation in society.

PAS includes assistance with activities of daily living (ADLs), such as eating, bathing, dressing, or toileting, or instrumental activities of daily living (IADLs), such as preparing meals, managing money, or shopping. ''Work-related PAS might include filing, retrieving work materials that are out of reach, or providing travel assistance for an employee with a mobility impairment; helping an employee with a cognitive disability with planning or decision making; reading handwritten mail to an employee with a visual impairment; or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment'' (President's Committee on Employment of People with Disabilities, *Personal Assistance Services in the Workplace,* 2000, *http://www.odc.state.or.us/tadoc/ada69.htm).*

In an analysis of data from the National Health Interview Survey on Disability (NHIS–D), 1994–95, LaPlante, Harrington, and Kang found that almost 13.2 million individuals in the U.S. needed or received an average of 31.4 hours per week of help with ADLs or IADLs, for a total of 22 billion hours of care annually. Most of that care was from unpaid caregivers (LaPlante M., Harrington C., and Kang T., *Estimating Paid and Unpaid Hours of Personal Assistance Services in Activities of Daily Living Provided to Adults Living at Home,* Health Services Research, 2002, publication pending). In other work based upon the same data source, the authors found that a substantial number of individuals reported that they needed more help than they received, with lower incomes being a key factor in whether or not the individual needed additional PAS (Harrington C., LaPlante M. and Kang T., *Estimating the Amount and Cost of the Unmet Need for Personal Assistance Services at Home,* Disability Statistics Center, draft 2000). Also, data from the NHIS–D indicate that more than 500,000 people would need help with the work-related tasks mentioned earlier in order to work—of that number, 176,000 are working, with 44,000 not being accommodated (e-mail communication to NIDDR Staff from Kay, S., Jan. 31, 2002).

Demographic, social, and environmental trends affect the prevalence and distribution of various types of disabilities as well as the demands of those disabilities on social policy and service systems. For example, persons age 65 and older have a greater need for PAS than do persons of working age, 21 to 64 (LaPlante, Harrington & Kang, 2000; McNeil J., *Americans with Disabilities: 1997,* U.S. Census Bureau, 2001). The effect of such a trend can be seen in the unmet needs for PAS and, for some, the need to rely upon a barely adequate patchwork of services. The specific nature of disability, whether physical, cognitive, or psychiatric, must also be evaluated in terms of significance to the availability of PAS that is appropriate to the individual. The Olmstead decision, NFI, and other policies and initiatives create what may be a fertile opportunity for expansion of PAS that reflects the independent living perspective.

Availability of, and payment for, worksite PAS requires models that allow greater freedom for individuals with disabilities to remain in, or re-enter, the workforce. Sometimes, ''in the workplace, PAS is provided as a reasonable accommodation to enable an employee to perform the functions of a job. The employer's responsibility for providing reasonable accommodations begins when the employee reaches the job site and concludes when the work day ends'' (President's Committee on Employment of People with Disabilities, 2000). Given the generally lower earnings of people with severe disabilities as compared to those without disabilities (McNeil, 2001), a substantial barrier may remain for individuals with lower earnings in particular. Workers with disabilities who may lack access to public programs or adequate health insurance may be unable to afford PAS at home and in the community.

A recent report of the National Blue Ribbon Panel on PAS notes that ''for many individuals with disabilities, absence of assistance with * * * non-medical, day-to-day activities * * * can affect the musculoskeletal, circulatory, respiratory, and skin systems * * * and can result in greater levels of disability and even greater need for health and support services'' (Dautel and Frieden, *Consumer Choice and Control: Personal Attendant Services and Supports in America, http://www.ilru.org/pas/BRPPAS.htm,* 1999). Living in the community with severe disability can require negotiation of a complex variety of programs and services to find appropriate PAS. In addition, depending upon geographic location, availability of family and other informal supports, respite care, and of course financial assets, adequate PAS may not be assured. As Harrington and LeBlanc report, the availability of home- and community-based services under Medicaid varies widely depending upon location (Harrington C. and LeBlanc A.J., Medicaid Home and Community-Based Services, Disability Statistics Report, 16, 2001). McNeil finds that people with severe disabilities are less likely than those without disabilities to be a householder and are more likely to live as an unrelated individual. Analysis of model policies to provide formal and informal assistance must be sensitive to the range of sociodemographic variables.

The availability of PAS is a complex issue involving many factors that affect community living and participation in employment activities. Individuals with disabilities and personal care assistants alike have reported numerous PAS workforce gaps, which negatively impact the provision of PAS services to individuals with disabilities. Recruiting potential PAS workers is hampered because of low pay, poor benefits, and lack of opportunities for professional training, development, networking, and career advancement (*Focus on the Frontline: Perceptions of Workforce Issues Among Direct Support Workers and Their Supervisors,* National Center on Outcomes Resources, *http://www.qualitymall.org/products/FMPro?-DB=qmproducts&-Lay=products&-format=product_1.html&-Error=error.html&-RecID=34051&hits=17&-Edit,* 2001). PAS providers also report difficulties measuring success, another factor that contributes to worker burnout (Cockerill R. and Durham N., *Attendant Care and Its Role in Independent Living, as Developed in Transitional Living Centres,* New England Journal of Human Services, 1992). Retaining existing PAS providers is difficult for the same reasons; as a result, morale is low and turnover rates are high.

Mending these gaps is necessary to ensure successful independent and community living for individuals with disabilities. Bob Kafka of American Disabled for Attendant Programs Today notes that ''whatever our solution it is clear that outreach for attendants will be essential if choice and control are to have any real meaning'' (Kafka, B., *Empowering Service Delivery: Evolving Home Health for the 21st Century, http://www.libertyresources.org/mc/ca-26.html,* 1998). The importance of training for PAS providers is clear, with some consumer groups noting that training should encompass philosophical as well as technical matters. Kafka writes, for example, that ''training should not focus so much on medical needs of the individual but rather on independent living principles, disability rights, body mechanics.* * *'' NIDRR-funded grantees and others have addressed some of these issues in conjunction with specific geographic or target populations and determined that what is needed is

an effort that is geographically diverse, covers a range of individuals with disabilities, and addresses issues raised by new policy initiatives.

Although the quality of PAS is impacted by training issues, policies, low wages, and other complexities, the extent of the PAS worker's knowledge about the needs of consumers is a major concern. For example, knowledge of assistive technology (AT) is critical to enabling individuals with disabilities to live as independently as possible. Therefore, workers can be trained about the range of AT resources available to individuals with disabilities. Information can be provided about how these devices work, how to obtain them, and how to assist individuals with disabilities to use them independently, to the greatest extent practicable. As one consumer report notes, it is important to combine ''the skills of listening and networking with the knowledge of resources and technical assistance to address the needs of people with disabilities in a timely manner'' (*People with Physical Disabilities are Speaking Out About Quality and Services,* National Center on Outcomes Resources, 2001).

Another important aspect of PAS affecting the well-being and productivity of persons with significant disabilities is the relationship between formal assistance and informal, unpaid assistance from family and friends. Although formal and informal care are in principle largely complementary, estimates from the 1994 National Long-Term Care Survey quoted by R. Stone indicate that the majority of noninstitutionalized elders with disabilities (67 percent) rely solely on unpaid help from family members (Stone R., *Long-Term Care for the Elderly with Disabilities; Current Policy, Emerging Trends and Implications for the Twenty-First Century, http://www.milbank.org/0008stone/index.html,* 2000). Other studies have estimated that 60–80 percent of all personal assistance and long-term care services in the United States, regardless of age, are provided by families (Morris R., Caro F., and Hansan J., *Personal Assistance; The Future of Home Care,* The Johns Hopkins University Press, 1998).

Key questions are: (1) To what extent, and how, is informal help from family and friends being used to supplement or replace the need for paid personal assistance services to support the employment, functional independence, and community integration of working-age and older adults with disabilities; (2) how satisfied are consumers with the combination of formal and informal services they receive; and (3) how does the provision of informal services affect the amount of paid personal assistance they utilize? In tandem with other issues surrounding PAS, the balance between formal and informal services is inextricably tied to funding sources, whether public or private. Research suggests that the degree to which funding streams, especially public programs such as Medicaid, pay for formal PAS in lieu of, or to supplement, informal PAS has substantial cost implications (Harrington, LaPlante, and Kang, 2000).

Priority 2

The Assistant Secretary proposes to establish a Rehabilitation Research and Training Center on Personal Assistance Services. The purpose of this absolute priority is to support methodologically rigorous collaborative research to generate new knowledge that informs service delivery providers and policymakers regarding the need for and provision of PAS at the worksite, in the community, and in home-based settings for individuals with physical, sensory, cognitive, psychiatric, and multiple disabilities.

The activities are:

(1) Identify or develop, or both, evaluate, and disseminate best practices for PAS at the worksite to facilitate employment of individuals with disabilities who need such accommodations;

(2) Identify or develop, or both, evaluate, and disseminate best practices for PAS in community- and home-based settings to facilitate maximum integration and participation by working-age and older adults with disabilities;

(3) Conduct research on the PAS workforce and workforce development that reflects geographic diversity and addresses PAS workforce recruitment, retention, compensation and benefits; professional training, development, and networking, for PAS providers, including communication between individual, group, public and private PAS providers; and crossover issues between disability and aging providers;

(4) Identify and analyze existing model State and Federal PAS policies and programs, and develop a database to inventory the results;

(5) Evaluate and determine the impact on, and relevance to, PAS at the worksite and in the community of recent policy initiatives, such as E.O. 13207 implementing the Olmstead decision, the NFI, and other systems change activities for changes to existing State and Federal policies and programs;

(6) Conduct research on the relationship between formal and informal PAS and caregiving support, and on the role of assistive technology (AT) in complementing personal assistance to enhance the function, access, independent living, and quality of life of working-age and older adults with disabilities. In addition, identify and evaluate barriers to obtaining and using multiple sources of support; and

(7) Identify, develop, and evaluate models to eliminate barriers encountered by working-age and older adults with disabilities in accessing and utilizing both formal and informal PAS and AT to support employment, functional independence, and community integration.

In addition to proposed activities, in carrying out these priorities, the applicant must:

- Involve individuals with disabilities or their family members, or both and persons who are members of groups that have traditionally been underrepresented, as appropriate, in all stages of research and related activities;
- In the fourth year of the project, conduct a state-of-the-science national conference to disseminate and discuss the results of the research with researchers, policymakers, consumers, and other stakeholders;
- Coordinate with other entities carrying out related research or training activities; and
- Identify coordination responsibilities through consultation with the NIDRR project officer.

Applicable Program Regulations: 34 CFR part 350.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 15, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–12619 Filed 5–17–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
May 20, 2002

Part V

Department of Housing and Urban Development

Notice of Availability of Revised HUD Occupancy Handbook and Request for Comments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4770–N–01]

Notice of Availability of Revised HUD Occupancy Handbook and Request for Comments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of Housing and Urban Development is revising HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. This notice advises the public that HUD will make available a copy of its revised Occupancy Handbook on the HUD website and invites interested parties to comment on HUD's revised Occupancy Handbook.

DATES: Comment Due Date: June 4, 2002.

ADDRESSES: A copy of HUD's revised Occupancy Handbook can be obtained via the World Wide Web at *http://www.hud.gov/offices/hsg/hsgmulti.cfm* or by calling the Multifamily Housing Clearinghouse at 1–800–685–8470. Interested persons may also submit comments regarding this Notice to the Department of Housing and Urban Development, Attention: Handbook 4350.3 Comments, Room 6134, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Comments may also be submitted by e-mail to: *occupancy_handbook_comments@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Dewayne Kimbrough, Director, Office of Housing, Grant and Housing Assistance Field Support Division, 451 Seventh Street, SW., Washington, DC 20410–2000; telephone number (202) 708–3000. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development is revising HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, as part of the Department's Rental Housing Integrity Improvement Project (RHIIP). RHIIP is a Secretarial initiative designed to reduce subsidy payment errors and to ensure that the right benefits are going to the right person. This handbook provides guidance for owners, management agents, residents, contract administrators, and HUD staff on the admission and continued occupancy for approximately 1.4 million households in project based subsidized housing units.

In order to improve the quality of HUD's revised Occupancy Handbook, HUD has determined to make copies available for public comment. Copies of HUD's revised Occupancy Handbook will be available for a period of five (5) business days beginning May 20, 2002, at the HUD website, *http://www.hud.gov/offices/hsg/hsgmulti.cfm.* Members of the public without access to the World Wide Web may obtain a copy of the revised Occupancy Handbook by contacting the Multifamily Housing Clearinghouse at 1–800–685–8474.

Public input is solicited on the overall scope and direction of the revised HUD Occupancy Handbook. Interested members of the public may submit comments either electronically or by overnight mail to the addresses listed in the **ADDRESSES** section above. To be most helpful, comments must be identified by specific page and paragraph references and must be received by June 4, 2002.

Dated: May 14, 2002.

John Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–12598 Filed 5–17–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday,
May 20, 2002

Part VI

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–2112–04]

RIN 0610–ZA14

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) Upon Availability of Funds.

SUMMARY: The role of government is to create conditions in which jobs are created, and in which people can find work. EDA is soliciting proposals to determine the role institutions of higher education can play in local and regional economic development and to conduct a demonstration project of faith-based and community organizations in economic development that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives. EDA will fulfill this mission by promoting progressive domestic business policies and growth, and by assisting states, communities, and individuals to achieve their highest economic potential.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on June 5, 2002, at 2:00 p.m. EDT in the Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230, Room 1414, at which time questions regarding these projects can be answered. Potential applicants are encouraged to provide written questions by June 3, 2002 (see **ADDRESSES** section below). Prospective applicants unable to attend this pre-proposal conference may participate by teleconference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–4:30 EDT on June 4, 2002.

Proposals for funding under this program will be accepted through June 19, 2002, at either of the addresses provided below. Proposals received after 4:00 p.m. EDT, on June 19, 2002, will not be considered for funding.

By June 28, 2002, EDA will notify proposers whether or not they will be given further funding consideration. Each successful proponent will be invited to submit an Application for Federal Assistance, OMB Control Number 0610–0094. Projects will be funded no later than September 30, 2002.

ADDRESSES:

1. Proposals may be mailed to:

John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, or

2. Proposals may be hand-delivered to:

John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

EDA will not accept proposals submitted by FAX.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085; e-mail: *jmcnamee@eda.doc.gov.*

SUPPLEMENTARY INFORMATION: In a previous notice published on March 1, 2002 (67 FR 9544) EDA stated that it would publish a separate announcement for its National Technical Assistance, Training, Research, and Evaluation program. Pursuant to that notice, EDA publishes program requirements and solicits applications for this program.

I. Funding Availability

Funding appropriated under Public Law 107–77 is available for the National Technical Assistance, Training, Research, and Evaluation program authorized by the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121, *et seq*) and as further amended by the Economic Development Administration Reform Act of 1998 (Public Law 105–393). Funds in the amount of $1,601,000 have been appropriated for FY 2002 and shall remain available until expended. Awards will be in the form of grants or cooperative agreements. The average funding level in FY 2001 for National Technical Assistance investments was $108,000, and for Research and Evaluation investments was $43,000. EDA anticipates using only a portion of this funding for the two RFPs described below and has no preset allocation for the division of the $1,601,000 between any areas of special interest.

II. Authority

The authority for the programs listed above is the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq*), and as further amended by Public Law 105–393.

III. Eligibility

The following entities are eligible to receive an award under this notice:

1. Institutions of higher education or a consortium of institutions of higher education;
2. A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a state;
3. For-profit organizations and private individuals;
4. An Economic Development District;
5. An Indian tribe;
6. A state;
7. A city, or other political subdivision of a state or a consortium of political subdivisions; or
8. An area described in section 301(a).

A copy of this list is also published at 13 CFR 300.2.

IV. Proposal Format

Each proposal submitted must include:

1. A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length);
2. A proposed budget and accompanying explanation;
3. Resumes/qualifications of key staff (not to exceed two pages per individual, with an additional two pages allowed for a single summary description of all organizations/consultants named in the proposal); and
4. A proposed schedule for completion of the project.

V. Evaluation and Selection Process

To apply for an award under this request, an eligible recipient must submit a proposal to EDA during the specified timeframe, at one of the addresses specified above. Proposals that do not meet all items required or that exceed the page limitations of Section IV of this RFP, will be considered nonresponsive, and will not be returned to the proponents. Proposals that meet all the requirements will be evaluated by a review panel comprised of at least three members all of whom will be full-time federal employees. The panel first evaluates the proposals using the general evaluation criteria set forth in 13 CFR 304.1 and 304.2. The panel then evaluates each proposal using the following criteria:

(1) The quality of a proposal's response to the Scope of Work and other

requirements described in Section VI below;

(2) The ability of the prospective applicant to successfully carry out the proposed activities; and

(3) Cost to the federal government.

The Assistant Secretary for Economic Development is the Selecting Official. He may or may not select highly rated proposals based on the evaluations provided by the review panel and the criteria set forth in 13 CFR 307.10.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094).

VI. Areas of Special Interest

EDA is inviting proposals for National Technical Assistance, Training, Research, and Evaluation as described below.

A. Program: Research and Evaluation—(Pub. L. 89–136, as amended by Pub. L. 105–393, 42 U.S.C. 3147)

(Catalog of Federal Domestic Assistance: 11.312 Research and Evaluation)

• Role of Institutions of Higher Education in Local and Regional Economic Development

EDA invites proposals to examine how communities can harness the wealth of intellectual and technical resources of institutions of higher education in local and regional economic development.

Background: Effective economic development depends on the participation of the major segments of a community. The wealth of intellectual and technical resources of institutions of higher education are often not fully tapped by the local community to promote economic development. Whether large or small, whether universities, four-year colleges, or community colleges, each institution of higher education already serves a unique role. Some promote economic development through research and teaching, providing the pool of educated workers needed for an increasingly technology-based economy. Others respond to the more localized training needs of community businesses. Often they are one of the larger employers in a community. However, some operate almost independently of the local community, while others are an integral part of the local economic development process and planning efforts.

Institutions of higher education can be a powerful force when harnessed effectively to serve the local community. Their highly qualified staffs can help develop a community's vision, provide the research and data for effective long-range local planning, and bring a regional and national perspective to the local economic development efforts. EDA funds a network of University Centers at institutions of higher education. This research is not intended to examine the role of these Centers. Rather, it is intended to explore the contributing role that all universities and colleges can play in more fully meeting the economic development needs of their communities.

Scope of Work: The successful applicant:

• Will identify and analyze the most common areas where universities effectively participate in the economic development of the community as well as barriers that prevent some from doing so.

• Will identify effective university-community partnerships for economic development that could be replicated by other universities and communities facing comparable situations.

• Will select a number of case studies for detailed review and analysis.

• Will suggest innovative approaches not presently used.

• Must prepare a report describing the selected case studies, the methodology used to select them, the lessons learned that would be of value to other universities and communities, and additional innovative practices.

• Conduct up to seven presentations of the study findings, as described in Section VII.B.

Timing: This project must be completed and the final report submitted within one year of approval of the project

B. Program: National Technical Assistance—(Pub. L. 89–136, as amended by Pub. L. 105–393, 42 U.S.C. 3147)

(Catalog of Federal Domestic Assistance: 11.303 Economic Development Technical Assistance)

• Demonstration project of faith-based and community organizations in economic development.

EDA invites proposals to conduct a demonstration of the role of faith-based and community organizations in economic development, that will build on and advances the links between faith-based and community organizations with the broader economic development needs of a community.

Background: The economic revitalization of many communities depends in great measure on the initiative of faith-based and community organizations. Such local organizations are in a position to understand the needs of their communities and to design programs that best address those needs. They have more trust from community members than do governmental agencies or those from outside who lack connections to the community. This trust in turn often leads to a sense of ownership by the community and enhances the likelihood of successful partnerships.

Scope of Work: The successful applicant will propose an actual project that demonstrates an effective role of a faith-based or community organization in local economic development. This project:

• Must be conducted by an existing faith-based or community organization with a demonstrated track record of completing projects effectively.

• Must convene leaders of community-based and faith-based organizations in a roundtable to discuss issues and devise strategies for the role of faith-based and community-based organizations in rural and urban redevelopment.

• Will demonstrate what additional services are needed and how these services can be effectively integrated into a local economic development strategy. Such services may include technical assistance to small business, job training and placement, housing rehabilitation, microenterprise, and business incubators.

• Must maximize private investment that would not otherwise take place without the EDA investment.

• Must, by the nature of the project, have significant potential to generate lessons that can be applied to other communities.

• Must include reasonable job creation or retention as a result of the investment.

• May be an existing project that can be expanded to enhance its success or a new project. If it is a new project, it must be up and running within six months of grant approval.

• Must prepare a report describing the demonstration and lessons learned that would be of value to other faith-based or community organizations, and identify potential applicants that have the experience to have an impact on local communities.

• Conduct up to seven presentations as described in Section VII.B.

Timing: Must either be completed within one year of project approval, or demonstrate that it can continue without additional federal funds.

VII. Other Information and Requirements

EDA regulations at 13 CFR Chapter III are available on the EDA Web site www.doc.gov/eda. The Department of Commerce Pre-Award Notification

Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation and can be found on EDA's Web site www.doc.gov/eda. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202. Certain Departmental and other requirements are noted below:

A. Projects are expected to be completed in a timely manner consistent with the nature of the project. The completion date for each project is specified in the RFP.

B. Each award includes a requirement that the successful applicant(s) conduct briefings and/or training workshops for individuals and organizations interested in the project results. The completion dates set forth above are only for completion of the project and submission of the written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's sole discretion. Usually these consist of at least one briefing in Washington, DC, with the other briefings/workshops held in conjunction with one or more of EDA's regional conferences.

C. Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, EDA may reduce or waive the required 50% matching share of the total project costs, provided the applicant demonstrates: (1) The project is not feasible without a reduction or waiver and the project merits a reduction or waiver, or (2) the requirements of 13 CFR 301.4(b) are satisfied.

D. Each award includes a requirement that the applicant submit an electronic version and 500 hard copies of the final report in formats acceptable to EDA.

E. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094. The EDA application (ED–900A), which incorporates the SF–424, are the forms in the EDA application kit, approved under the aforementioned OMB control number.

F. If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

G. EDA is committed to a policy of non-discrimination in the administration of all its programs.

H. EDA will notify unsuccessful proposers in writing and unsuccessful proposals will be maintained for not more than three years from the date of receipt.

I. This Notice has been determined to be ''not significant'' for purposes of Executive Order 12866.

J. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

K. Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

L. See EDA's Notice of Funding Availability for FY 2002 (67 FR 9544, 3/1/2002) for additional information and requirements (available on the Internet at *http://www.doc.gov/eda*, under the heading ''Notice of Funding Availability.''

Dated: May 15, 2002.

Mary C. Pleffner,

Acting Assistant Secretary for Economic Development.

[FR Doc. 02–12607 Filed 5–17–02; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5]Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5]Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.